

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

REDDY VIJAY ANNAPPAREDDY)
Plaintiff,) Trial Day 2
vs.) Civil No.
PAM ARNOLD, ET AL.) 18-cv-3012-JFA
Defendants.) Baltimore, Maryland
June 1, 2023
9:30 a.m.

THE ABOVE-ENTITLED MATTER CONTINUED
FOR BENCH TRIAL
BEFORE THE HONORABLE JOSEPH F. ANDERSON, JR.

A P P E A R A N C E S

On Behalf of the Plaintiff:

JOSHUA D. GREENBERG, ESQUIRE
KOBIE FLOWERS, ESQUIRE

On Behalf of the Defendant United States of America:

MATTHEW P. PHELPS, ESQUIRE
MOLISSA H. FARBER, ESQUIRE
LAWRENCE EISER, ESQUIRE

Also Present:

Reddy Vijay Annappareddy
Keegan Miller, Law Clerk

(Computer-aided transcription of stenotype notes)

Reported by:

Ronda J. Thomas, RMR, CRR
Federal Official Reporter
101 W. Lombard Street, 4th Floor
Baltimore, Maryland 21201

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Maura Lating (cont.)

Direct by Mr. Greenberg (cont.)

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1 (9:30 a.m.)

2 **THE COURT:** Good morning. Please be seated.

3 (All Counsel - "Good morning, Your Honor.")

4 **THE COURT:** Two things before we begin. We will need
5 to hold court on Friday of each week of trial. The Government
6 is spending a lot of money to bring my law clerk and I up here
7 and house us and all, and we need to maximize our time while
8 we're in Baltimore. So plan on being here this Friday and next
9 week. Also, if we're able to meet the 30 hours per party in
10 position I put in place, we should be able to finish by Friday,
11 the 16th of June. We have a flight to go back that Friday late
12 in the afternoon, actually, very late. And then the following
13 Monday is Juneteenth, a federal holiday, and the week after
14 that is the 4th of July. So if we don't finish by the 16th,
15 and I don't see any reason why we can't, we won't come right
16 back the next week. We'll probably have to flip over until
17 after the 4th of July, sometime in mid- to late-July, to finish
18 whatever needs to be done. I just tell you that for planning
19 purposes.

20 All right. Second, on the matter we bogged down on
21 yesterday. I don't think we have too much of a disagreement,
22 it's more a matter of nomenclature than anything else, I
23 believe.

24 First of all, I understand you probably want to brief
25 this, but let me just lay it out the way I see it at this

1 point. When a federal agent, investigative agent, writes a
2 report, that report qualifies as a public record.

3 For example, an agent goes to a pharmacy and writes a
4 report saying, "I saw bins of pharmaceutical containers in the
5 hallway," and puts that in a written report, well, that report
6 is hearsay, it's an out-of-court statement in writing offered
7 for the truth. But it's a public record, and it comes in to
8 show that that agent saw what he saw and put in his official
9 report.

10 The problem comes in is if the report quotes a
11 third-party, and that gets us into a second level of hearsay,
12 and that quote from a third-party witness, so to speak, cannot
13 come in for its truth unless it also meets a hearsay exception.
14 For example, if the agent writing the report quotes a witness
15 who made an excited utterance, it may come in as excited
16 utterance, probably not in this case, but that's just an
17 example.

18 So most of the time, the report that quotes a third party
19 is not going to come in for the truth of the matter asserted by
20 the third party, unless it meets the hearsay exception.

21 And I think, Mr. Greenberg, you were concerned about that
22 fact yesterday, and I want to make it clear. To the extent the
23 report quotes a witness, the statement by the witness does not
24 come in for its truth because it's hearsay. But it could come
25 in for its truth if it meets the hearsay exception, which

1 probably won't happen here.

2 Also, it can come in to show the effect of the words on
3 the listener or what the parties have commonly referred to as a
4 subjective intent of the mental state or the effect of the
5 words on the listener. And it can be important for that in
6 terms of whether the agent had reason to believe what these two
7 whistleblowers told them or had reasons to suspect what the
8 whistleblowers told them. As I said yesterday, it might come
9 in possibly on the subsidiary question of malice, because to
10 prove malicious prosecution, the Plaintiff has to show an
11 absence of probable cause and also malice. To the extent the
12 agents heard statements from other people that they interviewed
13 that did not go into the Lating affidavit, but nevertheless
14 were in the mind of the investigating agent, it might go to
15 negate a showing of malice. And we can thrash that all that
16 out and argue it after the evidence is in, but I don't see any
17 reason for us now to bog down on that.

18 My law clerk, said, Mr. Greenberg, you want to brief the
19 issue, I'd be glad to receive a brief, but we don't need to
20 decide it today, is what I'm saying. All right.

21 **MR. GREENBERG:** Understood, Your Honor. Thank you.

22 **MR. PHELPS:** Your Honor, I did spend some time doing
23 legal research. *United States v. DeQuasie* 373 F.3d. 509. It's
24 a published Fourth Circuit opinion. And the Fourth Circuit
25 said: It is well settled that probable cause may be founded

1 upon hearsay and information received from informants, and it
2 cites *Franks*.

3 **THE COURT:** I understand that. I think the problem is
4 some of these statements, some of these reports quoting
5 witnesses were not included in the Lating affidavit. And I
6 think that's where we have a little issue to deal with here.
7 What did they come in for if they did not go on the Lating
8 affidavit? I don't think we have a big disagreement here. We
9 can thrash this out after the evidence is all in.

10 So with that, let's put the witness back on the stand and
11 resume the questioning.

12 Start the clock.

13 **MR. GREENBERG:** Thank you, Your Honor. Reddy
14 Annappareddy calls Maura Lating back to the stand.

15 **THE CLERK:** Please raise your right hand.
16 (Witness sworn.)

17 **THE CLERK:** You may be seated.

18 **THE WITNESS:** Thank you.

19 **THE CLERK:** For the record, ma'am, could you please
20 restate your name.

21 **THE WITNESS:** Yes. My name is M-A-U-R-A, J, Lating,
22 L-A-T-I-N-G.

23 **THE CLERK:** Thank you.

24 **THE WITNESS:** Thank you.

25 - - -

DIRECT EXAMINATION (CONT.)

- - -

BY MR. GREENBERG:

Q. Good morning, Ms. Lating.

A. Good morning, Mr. Greenberg.

Q. To follow up on a point that we were talking about near the end of the day yesterday, you agree that there was no undercover operation attempted at CareMerica, right?

A. No, there wasn't.

Q. So the answer is "yes"?

A. Yes.

Q. Please turn to Tab 47 in your Plaintiff's exhibit binder.

This is an email chain starting --

A. This is the one that has a label?

Q. It's the one without a label, I believe.

A. Forty-seven. Okay.

Q. Tab 47. I'll focus your attention on the email --

A. Yes. Oh, I'm sorry. I'm in the wrong one.

Okay.

Q. Are you at Tab 47?

A. Yes.

Q. You see that there's an email from Pam Arnold to a number of folks, including you and Robert Mosley, May 31st, 2013, 2:17 p.m.?

A. Yes.

1 Q. And the subject is "Paid Claims CareMerica"?

2 A. Yes.

3 Q. And Ms. Arnold wrote, in the first sentence, "I have
4 looked at the data for CareMerica, and between December 11,
5 2012, and May 1st, 2013, CareMerica has been paid over
6 \$1.9 million by Medicaid." Right?

7 A. Yes.

8 Q. And it goes on to say, quote, "The top billed drug is
9 Atripla-\$517,284.55. That one medication is 25 percent of
10 their billings/payments, exclamation point," end quote. Right?

11 A. Yes.

12 Q. And then Ms. Arnold went to say, quote, "The next highest
13 bill/payment is Truvada-\$426,986.07. Another 25 percent, give
14 or take." Right?

15 A. That's what it says.

16 Q. Then Ms. Arnold says, "So 50 percent of the
17 billing/payments are for these two drugs." Right?

18 A. That's what it says, yes.

19 Q. And both of those were HIV drugs, right?

20 A. Yes.

21 Q. And do you recall that Laurie Gutberlet did a paid claims
22 analysis in a memo dated August 6th, 2012?

23 A. I don't recall that.

24 Q. Okay. Let's turn to -- just briefly, let's turn to
25 Plaintiff's Exhibit 14. If you could, please, turn to page --

1 that's not the right one, sorry. No, it is the right one.

2 Tab 14, that memo of Ms. Gutberlet paid claims analysis.

3 And you turn to Page 7, please. I'm sorry. To be clear,

4 Page 7 of the memo, not ECF number.

5 A. Okay. Yes.

6 Q. And you see how there's a Table 6 there?

7 A. Yes.

8 Q. It's "Top 20 drugs billed by Pharmacare by dollar amount
9 through June 12, 2012"?

10 A. Yes.

11 Q. And you, as you testified yesterday, reviewed all of
12 Ms. Gutberlet's emails and memos and other communications
13 carefully, right?

14 A. Yes.

15 Q. So you knew that Ms. Gutberlet had found that through
16 June 12th, 2012, over a year before you presented the Lating
17 affidavit on July 23rd, 2013, the two top drugs for Pharmacare,
18 by far, were Atripla and Truvada, right?

19 A. Based on this table, yes.

20 Q. And, in fact, those two drugs -- no other drug in this
21 table is more than a million dollars, right?

22 A. Correct.

23 Q. And Atripla and Truvada together add up to over
24 \$6.6 million, right?

25 A. Yes.

1 Q. And if you go back to Plaintiff's Exhibit 47 -- let me ask
2 you one more question.

3 You know that -- we've talked about it yesterday, but just
4 to kind of link this. The analysis that Ms. Gutberlet did,
5 because it was through June 12th, 2012, was about six months
6 before CareMerica opened, right?

7 A. Correct.

8 Q. So let's go back to Plaintiff's Exhibit 47, please.

9 A. Yes.

10 Q. So after CareMerica opened, this is, you know, I guess
11 around five and a half months, ballpark, after CareMerica
12 opened, there's the same pattern; Atripla and Truvada are far
13 and away the two most billed drugs to Maryland Medicaid, right,
14 at CareMerica?

15 A. Yes. Yeah. Yes.

16 Q. And that was something that stood out to you, right?

17 A. Stood -- I may be copied on these emails, but Robert
18 Mosley, Pam Arnold, Laurie Gutberlet, they were the numbers
19 person on this case. So yes, I was copied on these emails.
20 I'm reading it now. I don't recall my impression of it when I
21 read it back in 2013, but that's all I've got to say.

22 Q. Is it your testimony that an email saying that two HIV
23 drugs made up about 50 percent of the Medicaid billings to
24 CareMerica didn't stand out to you back then?

25 A. I don't recall my impression of this email back then or

1 even now reading it.

2 **Q.** Okay. But it's kind of obvious that if two drugs at a new
3 specialty pharmacy make up about 50 percent of their Medicaid
4 billings, that's a pretty important fact, right?

5 **MR. EISER:** Objection, asked and answered twice now.

6 **THE COURT:** I'm sorry? Asked and answered?

7 **MR. EISER:** Yes.

8 **THE COURT:** I do believe you've covered that.

9 **BY MR. GREENBERG:**

10 **Q.** All right, Ms. Lating. Now, under the paragraph that
11 included the exclamation point for Atripla and then the
12 50 percent figure, the next sentence under that paragraph says,
13 "The next medication that would include in the analysis is
14 Reyataz, \$161,871.81, and Kaletra, \$68,137.26." Right?

15 **A.** That's what it says.

16 **Q.** And those are both HIV drugs, right?

17 **A.** I don't recall. I don't recall.

18 **Q.** Well, at the time, you knew which were HIV drugs, right?

19 **A.** I would have known, yes. I don't -- I can't say for sure
20 today what they are.

21 **Q.** Right.

22 But during the Pharmacare investigation, as the leader of
23 the team, you knew what were the HIV drugs, right?

24 **A.** I knew what the analysis was going to involve, which was
25 what was referred to as Med-4s, HIV, antipsychotic, cancer

1 drugs, and hepatitis C drugs.

2 Q. Well, let's --

3 A. These drugs would have been one of what was referred to as
4 Med-4s by Pharmacare.

5 Q. So let's talk about that. You testified yesterday that
6 CareMerica took over the overwhelming majority of Med-4s after
7 open, right?

8 A. The newly opened CareMerica at Old Emmorton, yes.

9 Q. So from sometime in September 2012 onward, CareMerica
10 handled the overwhelming majority of Med-4s, right?

11 A. My recollection really started in January of 2013, the
12 Med-4 billings. The last one done was December 31st, 2012, at
13 Plumtree, and then it officially transferred over to
14 Old Emmorton.

15 Q. Okay. Well, yesterday you testified it was December 2012,
16 but regardless of what it exactly was, you agree that whenever
17 CareMerica newly opened, it took over the overwhelmed majority
18 of Med-4s, correct?

19 A. Correct. CareMerica reopened in December 2012.

20 Q. Ms. Lating, we covered this yesterday.

21 A. Okay.

22 Q. It didn't reopen.

23 A. Okay.

24 Q. You agree it was a new specialty pharmacy, closed-door
25 pharmacy?

1 A. Correct.

2 Q. And you testified that it's inaccurate to say it was
3 reopened. We covered this yesterday.

4 A. No, what I testified to --

5 Q. Ms. Lating --

6 A. -- I agree it reopened in December 12th, 2012, and that
7 the Med-4 billings were going to transfer over to the new
8 location.

9 Q. I don't want to spend a lot of time on this. But you
10 testified unambiguously yesterday that it was a new closed-door
11 pharmacy that opened in December 2012 at Target location number
12 3 called CareMerica or after the previous pharmacy shut down
13 from your modeling --

14 THE REPORTER: I'm sorry, Counsel, you're going to
15 have to restate that question.

16 BY MR. GREENBERG:

17 Q. You testified unambiguously yesterday, Ms. Lating, that a
18 new closed-door specialty pharmacy named CareMerica opened at
19 target location number 3 in December 2012. Are you recanting
20 your testimony?

21 MR. EISER: Objection. Argumentative.

22 THE COURT: Overruled.

23 THE WITNESS: I'm saying I agree with you, and I
24 testified correctly yesterday that it did reopen in December of
25 2012. What I'm saying is, I know for a fact that there were

1 Med-4 billings done December 31st, 2012, at Plumtree. So there
2 could have been some done also in December 2012 at
3 Old Emmorton. What I'm saying is, I agree with you. It was
4 reopened, remodeled location on December 12th, 2012.

5 Q. So yesterday you said -- you testified under oath that it
6 would be inaccurate to say that it reopened at that location;
7 are you recanting that testimony?

8 A. Sir, I just agreed with you. And I testified correctly
9 yesterday. I agree with you. Old Emmorton, under the new
10 name, CareMerica, was opened mid-December 2012. I totally
11 agree with you.

12 What we're referring to, were there billings still going
13 on Plumtree late 2012, Med-4 billings? Yes, there were.

14 Q. Okay. So, I mean, just so we're clear, you agree that
15 CareMerica took over the overwhelming majority of Med-4s
16 whenever it opened, right? Or soon thereafter.

17 A. I would be comfortable saying soon thereafter.

18 Q. All right. Now, let's look the last sense, on Plaintiff's
19 Exhibit 47. It's talking about CareMerica, and it says, quote,
20 "There are no billings for Seroquel, Invega, Geodon, Lidoderm,
21 Lexapro, Suboxone or Zyprexa."

22 Now, you knew, at least in 2013 -- you probably remember
23 today, because you remembered the address of Old Emmorton, when
24 it closed in early January 2012, yesterday -- Seroquel is a
25 psychiatric drug, right?

1 A. Yes.

2 Q. And Invega is a psychiatric drug, right?

3 A. I do recall that.

4 Q. Geodon is a psychiatric drug, right?

5 A. I don't recall that.

6 Q. Okay. But you know it's not an HIV drug, right?

7 A. It's not an HIV drug.

8 Q. And you know it's not a hepatitis C drug?

9 A. I don't -- I'm not really -- you know, back then, I
10 probably would have been more familiar with the nature of all
11 these drugs.

12 Q. Okay.

13 A. Just from --

14 Q. And Lidoderm, you know that's a mild painkiller, right?

15 A. Pain.

16 Q. And Lexapro is a psychiatric drug, right?

17 A. Yes.

18 Q. And Suboxone is for -- I think for addiction, right?

19 A. Yes. Drug addiction.

20 Q. And last one, Zyprexa, is an antipsychotic, right?

21 A. That one, I don't know. I'm not recalling that today.

22 Q. All right. Well, this sentence is showing no billings at
23 CareMerica for those drugs we just went through, right?

24 A. That's what Pam Arnold is saying in this email, correct.

25 Q. Okay. Let's move to a somewhat different, but related,

1 topic, and that's the issue of an ongoing scheme being needed
2 for probable cause.

3 You agree that to have probable cause to search a
4 particular location, there has to be an ongoing scheme or
5 ongoing crime at that location, right?

6 A. Yes. Or reason to believe that there's evidence of the
7 crime still at that location.

8 Q. And there has to be an ongoing crime, right?

9 A. Ongoing crime. But also, that I have reason to believe
10 that there's evidence maintained at a location that I want to
11 search.

12 Q. And the evidence, with respect to CareMerica, consisted
13 of -- primarily of statements by Dennis Tokofsky, right?

14 A. Are we referring -- are we referring to Old Emmorton, the
15 physical location, or the name CareMerica, formerly known as
16 Pharmacare?

17 Q. Well, that's why I think it's important to stick to your
18 testimony yesterday, which was accurate, that it was a new
19 specialty pharmacy called CareMerica at that location.

20 A. I'm sorry. Could you rephrase the question.

21 Q. All right. Let me sort of try to get at this differently.

22 A. Okay.

23 Q. You knew that Pharmacare's computer systems from one store
24 to the other were not linked, right?

25 A. I knew -- right, the computer system is not linked --

1 Q. Each store --

2 A. -- is not networked.

3 Q. Sorry, I didn't mean to interrupt you.

4 Each store had a separate computer system, and they
5 weren't connected, right?

6 A. Correct.

7 Q. So when Old Emmorton shut down for remodeling in early
8 January 2012, that computer system was no longer operating,
9 right?

10 A. Well, it was shut down, correct.

11 Q. Okay. And then the Med-4s, as you testified yesterday,
12 had been transferred to Plumtree in February 2011, right?

13 A. Yes.

14 Q. And so -- so the computers at Plumtree stayed at Plumtree,
15 right? They didn't get moved anywhere, and they were never
16 linked, right?

17 A. Right. That's correct.

18 Q. Okay. So when CareMerica opened in December 2012 or
19 January 2013, as a new specialty pharmacy, you had a new
20 computer system that was isolated by itself, right?

21 A. I disagree.

22 Q. Well, you testified, like, 30 seconds ago that every store
23 had its own computer system, right?

24 A. I would feel more comfortable if you wouldn't refer to it
25 as CareMerica, and use the address that I was doing a search

1 warrant for, which was 2227 Old Emmorton Road, Suite 120 and
2 Suite 122. Whether it was called CareMerica or Pharmacare, the
3 location was what I was searching, not the name CareMerica,
4 just to clarify what you're asking me.

5 **Q.** All right. Well -- so, respectfully, Ms. Lating, we're
6 not going to do that because you testified that CareMerica was
7 a new closed-door specialty pharmacy that you agree is
8 fundamentally different from a retail pharmacy. We're not
9 going to blend them the way you did in the affidavit. Okay.

10 I'm asking you about CareMerica that opened December 2012
11 or January 2013. You knew it had its own new computer system,
12 right?

13 **MR. EISER:** Objection, argumentative, compound.

14 **THE COURT:** Well, break it up into separate questions.

15 **MR. GREENBERG:** All right, Your Honor.

16 **BY MR. GREENBERG:**

17 **Q.** Ms. Lating, we're going to talk about CareMerica, because
18 you testified, today and yesterday, that was a new closed-door
19 specialty pharmacy, right?

20 **A.** Yes.

21 **Q.** And as a new closed-door specialty pharmacy, it had its
22 own computer system, right?

23 **A.** Yes.

24 **Q.** And that was not linked to any other Pharmacare store,
25 right?

1 A. Correct.

2 Q. So we've talked about the computer systems.

3 You agree that MEDIC 1495, because it ended its date range
4 in October 2012, that was before CareMerica opened, right?

5 A. Before -- correct, correct.

6 Q. So MEDIC 1495 couldn't have given you probable cause for
7 CareMerica, right?

8 A. MEDIC -- you do understand that there was billing at that
9 location pre-February 2011 under Pharmacare?

10 Q. You're talking -- you're referring to the Old Emmorton
11 store that shut down early in January 2012?

12 A. Right. The same location when it became CareMerica.

13 Q. Okay.

14 So I'm trying to clarify that -- I mean, you agree that
15 MEDIC 1495 did not cover the CareMerica specialty pharmacy
16 because it didn't exist as of October 2012, which is the end
17 date, right?

18 A. Right.

19 Q. Okay. And so your statements in your affidavit about
20 target location number 3 were based mainly on Dennis Tokofsky,
21 right?

22 A. No.

23 Q. You were relying on the fact that there was an
24 Old Emmorton store there about a year and a half before the
25 search warrants?

1 A. Yes.

2 Q. You understand what stale evidence is, right?

3 A. Yes, I do.

4 Q. And you understand that stale evidence cannot support
5 probable cause, right?

6 A. Stale evidence --

7 Q. It's a "yes" or "no" question.

8 A. No, I wouldn't use stale evidence in a affidavit.

9 Q. And you were trained not to do that by the FBI, weren't
10 you?

11 A. If you can point out stale evidence in my affidavit,
12 please refer to it.

13 Q. Ms. Lating, I would ask you please just answer my
14 questions.

15 You were trained by the FBI on what is stale evidence,
16 weren't you?

17 A. Yes, I was.

18 Q. And you would not want to use stale evidence in an
19 affidavit, right?

20 A. I wouldn't want to use stale evidence in an affidavit.

21 Q. And Dennis Tokofsky, you knew that he reported an incident
22 in January 2012 where he saw prescriptions from 2011, right?

23 A. Yes.

24 Q. In 2011, those prescriptions were for roughly two years or
25 more before you presented your affidavit, right?

1 A. Yes.

2 Q. I just want to come back to the point about an ongoing
3 scheme. You understood as of when you worked in the Lating
4 affidavit -- which, by the way, you started that in early
5 March 2013, right?

6 A. No, sir.

7 Q. Well -- okay. You started an affidavit that was initially
8 for Google emails, right?

9 A. No, sir.

10 Q. No, sir? Okay.

11 You did start working on an affidavit of some kind for the
12 Pharmacare matter in March 2013, right?

13 A. It was earlier than that.

14 Q. It was what?

15 A. It was earlier than that.

16 Q. Oh, okay. All right. So how much earlier?

17 A. I received a binder of the Medicaid reports January 2013.

18 I would say early February, I started drafting an affidavit.

19 Not real clear if we were going to do email and location search
20 warrants, which came -- which one we were going to do first.

21 So my affidavit that I was drafting was in a way that it could
22 be tweaked to do the email search warrants first or -- and then
23 we can amend it for the location. So February 2013 I really
24 started putting it all together after I reviewed all the
25 reports.

1 Q. Ms. Lating, thank you for clarifying that. I appreciate
2 that.

3 So overall, you worked on the Lating affidavit in some
4 form, whether it was called a search warrant affidavit for
5 locations or just an affidavit, for at least five months?

6 A. Five months before what?

7 Q. Okay. So you presented the Lating affidavit on July 23rd,
8 2013, right?

9 A. Correct.

10 Q. And you testified you started working on an affidavit in
11 February of 2013.

12 A. Correct.

13 Q. So that's more than five months, right?

14 A. I did the email search warrant first in May 2013, so it's
15 less than --

16 Q. I understand.

17 But you recall that you -- you know, you ended up copying
18 and pasting the Google search warrant affidavit into what
19 became the location affidavit, right?

20 A. And adding paragraphs.

21 Q. Right.

22 A. Yes.

23 Q. What I'm trying to get at, Ms. Lating, is, I mean, this is
24 something you worked on for several months, right?

25 A. Yes.

1 Q. It was not done in haste.

2 A. No, it was not.

3 Q. And I want to go back to the point about an ongoing
4 scheme.

5 It wouldn't be enough, as you understood it, in the spring
6 or summer of 2013, to have probable cause unless you had an
7 ongoing scheme, right?

8 A. Can you rephrase that question because I'm just trying to
9 understand what you're saying.

10 Q. So I just want to make sure I'm clear. You agree that
11 your understanding, as of the months you worked on this
12 affidavit, was that you needed an ongoing scheme to have
13 probable cause, right?

14 A. Yes.

15 Q. And you knew that not a single patient who got a
16 prescription or was billed under their name at CareMerica was
17 interviewed by anybody, right?

18 A. In 2012, they were.

19 Q. At -- I'm asking -- let me clarify.

20 A. Okay.

21 Q. I want to be clear.

22 You knew, when you worked on that affidavit for
23 five months-plus, that not a single person was asked about
24 their experience with CareMerica, right?

25 A. In 2013, you're saying?

1 Q. Well, it opened either December 2012 or January 2013,
2 depending on what you're looking at. So since when it opened,
3 not a single person was interviewed about any experience they
4 had with CareMerica, right?

5 A. That's correct.

6 Q. Before CareMerica opened -- we've talked about this, but I
7 just want to circle back. I want to talk about the volume of
8 prescriptions that Pharmacare handled for Med-4s, all right?

9 A. Okay.

10 Q. When Plumtree was doing most of the Med-4s, Laurie
11 Gutberlet interviewed Lisa Ridolfi at least four times, right?

12 A. At least, yes.

13 Q. Okay. And also during that period, Ms. Gutberlet
14 interviewed Sue Cramer, right?

15 A. Mary Sue Cramer, correct.

16 Q. And you believe that Sue Cramer was a reliable informant,
17 right?

18 A. I wouldn't consider her an informant.

19 Q. What would you consider her?

20 A. She was just someone that was interviewed that was a
21 former employee of Pharmacare.

22 Q. All right. Well, you considered her a reliable source of
23 information, right?

24 A. Yeah. She had an impressive background.

25 Q. Okay. And please turn to Plaintiff's Exhibit 18. Let me

1 know when you're there, please.

2 A. I am there, Mr. Greenberg.

3 Q. Okay. Do you see this is a memo dated September 12, 2012,
4 the Pharmacare file from Laurie Gutberlet?

5 A. Yes. The report is dated September 12, 2012.

6 Q. And it's on her interview of Mary Sue Cramer on August 27,
7 2012, right?

8 A. Correct.

9 Q. And did you know during the Pharmacare investigation on
10 that very date, or on or about that date, Lisa Ridolfi got a
11 written performance warning?

12 A. No, I don't -- I don't think I knew that.

13 Q. Because Lisa Ridolfi never told that to anyone in the
14 investigation team, right?

15 A. Okay. I have no recollection of being told that by
16 anybody on the team, so I don't know that.

17 Q. Now, Dennis Tokofsky had also received performance
18 warnings before he left Pharmacare, right?

19 A. I don't recall that, unless you have something to refresh
20 my memory, a report. I don't recall being told that.

21 Q. Well, it's not in a report because he didn't tell any
22 investigator that. Did you find out about it otherwise?

23 A. No. This is the first I'm hearing of this. I didn't know
24 that, no.

25 Q. So you would never have seen an email about that?

1 A. I have no -- I have no recollection of an email, unless
2 you have something to refresh my memory.

3 Q. And were you aware that Lisa Ridolfi got a written
4 performance warning in February of 2012?

5 A. I don't -- I don't recall that, no. 10 years later, I
6 don't -- over 10 years later, I don't recall.

7 Q. Were you aware that Lisa Ridolfi inquired or spoke with
8 Laurie Gutberlet about being a whistleblower?

9 A. I have no knowledge of that.

10 Q. But Laurie Gutberlet shared all her information with you,
11 right?

12 A. I read her reports, and she helped me draft the affidavit
13 before she left, but we never had a conversation -- I don't
14 even know if that's true about Lisa Ridolfi thinking of being a
15 whistleblower and it coming from Laurie Gutberlet; no, I don't
16 have any recollection of that conversation in 2013 with Laurie
17 Gutberlet.

18 Q. Well, do you remember that before Laurie Gutberlet left
19 the MFCU, she did what's called a brain dump?

20 A. She did a brain dump?

21 Q. Meaning, conveyed everything she knew about the Pharmacare
22 investigation that was important to you and Mosley and Arnold,
23 right?

24 A. Before she left, I insisted that her and I sit down
25 together because I had a draft, the latest draft of the

1 affidavit, her and I sat down for a few days in her conference
2 room at the Medicaid office, and we went paragraph by
3 paragraph, and I got her input on, is there anything I didn't
4 extract from your reports that you want to put in there. So if
5 you call that a brain dump -- and I think there's an email that
6 Cathy Pascale is saying, we need to do a brain dump or
7 something. I've never used that term before. But, yes, I
8 wanted to make sure that I did Laurie Gutberlet's investigation
9 justice before she left, and made sure that the affidavit
10 covered all her -- all her work.

11 Q. Right.

12 A. So, yes, we brain dumped for a few days.

13 Q. And it didn't just include the memos or the emails, it
14 also included information in Laurie Gutberlet's mind when she
15 told you about the matter, right, the investigation?

16 A. She would give me -- yeah, she would give me information
17 that maybe I interpreted differently in her reports; she would
18 clarify things with me.

19 Q. And one of the things that Laurie Gutberlet told you,
20 either at that brain dump or earlier, was that there was a
21 discussion that she had with Lisa Ridolfi that involved the
22 topic of Ridolfi and a whistleblower?

23 A. Absolutely not. No.

24 Q. You don't remember that?

25 A. No, no. Ten years later, I can tell you no, I was not

1 aware.

2 Q. Well, you don't remember, right?

3 A. No, I -- if Laurie Gutberlet had told me that Lisa was
4 going to be a whistleblower, no. It -- that would have been a
5 discussion I would have had with the prosecutors on -- and that
6 would have been an interview with Lisa Ridolfi, above that.

7 Q. Okay. That's something you're certain of?

8 A. Am I certain that Laurie didn't tell me that Lisa wanted
9 to be a whistleblower? Yes.

10 Q. I didn't say "wanted to be," I said had a conversation of
11 the topic of being a whistleblower?

12 A. I am very confident of that. I don't recall a
13 conversation with Laurie Gutberlet to that effect.

14 Q. Well, how confident are you? I thought you were
15 100 percent, now it's very certain.

16 A. I'm very certain. I'm very certain that I wasn't told by
17 Laurie Gutberlet that that was even something that was being
18 addressed by Lisa Ridolfi.

19 Q. Okay. But you were copied on an email on July 1st, 2013,
20 about that very subject, weren't you?

21 A. Can you show me the email?

22 Q. Maybe. You remember things pretty well, but you don't
23 remember that?

24 A. No, I don't -- there's an email in July of 2013 about Lisa
25 wants to be a whistleblower?

1 Q. I'm asking if you remember that.

2 A. I don't have any recollection of that. It has been
3 10 years, but I have no recollection of that.

4 Q. So July 1st, 2013, is nearly three months after
5 Ms. Gutberlet left MFCU, right?

6 A. She left in April --

7 Q. Early April, right?

8 A. Early April 2013.

9 Q. Right.

10 And so if Ms. Gutberlet, telling you about the
11 whistleblower, with all of this information, you may not
12 remember, right?

13 A. I'm sorry. Can you rephrase that question?

14 Q. Well, you're not remembering this email July 1st, 2013,
15 right?

16 MR. EISER: Objection.

17 THE COURT: What basis?

18 MR. EISER: He's been probing her memory about this
19 email on July 1st, 2013. We haven't seen it, she hadn't seen
20 it. She asked for it, and I'm not sure what we're getting to
21 here.

22 THE COURT: Can you show her a copy?

23 MR. GREENBERG: Perhaps. But, I mean, her memory --
24 she remembered the address.

25 THE COURT: You can test her memory, and then show her

1 a copy and follow up on.

2 **MR. GREENBERG:** Yeah, Your Honor, I probably will
3 later, but I just want to ask --

4 **THE COURT:** All right. Well, go ahead. I'll leave it
5 at that. Go ahead.

6 **BY MR. GREENBERG:**

7 **Q.** Ms. Lating, you've testified that you don't recall this
8 July 1st, 2013, email. Now, with Gutberlet giving this brain
9 dump and all that information, you don't remember the
10 whistleblower statement coming up, do you, about Ridolfi?

11 **A.** Okay. I really need you to rephrase the question because
12 I'm not sure if you're asking me did Laurie Gutberlet
13 personally tell me this? Or is there an email, July 1st, 2013,
14 and who did that come from?

15 **Q.** All right. Let's try it a different way.

16 You relied on Pam Arnold during the investigation, right?

17 **A.** I relied on her once Laurie left, Laurie Gutberlet left.

18 **Q.** Okay. After Laurie Gutberlet left, you relied on
19 Pam Arnold, right?

20 **A.** For anything that we needed from Medicaid. But really,
21 she worked closely with Robert Mosley. My tasks for her were
22 very little.

23 **Q.** Well, you agree that Pam Arnold was the primary contact
24 with Lisa Ridolfi after Laurie Gutberlet left, right?

25 **A.** Yes.

1 Q. All right. So you, at least, relied on Pam Arnold, among
2 other things, for information about Lisa Ridolfi, right?

3 A. I relied on Pam Arnold -- can you say that again.

4 Q. So, okay. I understand that you relied on Pam Arnold for
5 some Medicaid stuff, but I'm asking about Lisa Ridolfi,
6 correct?

7 A. Yes. If we needed anything, information either for the
8 affidavit or the prosecutors needed something from
9 Lisa Ridolfi, Pam Arnold was the one that would reach out to
10 Lisa Ridolfi.

11 Q. And so information about Lisa Ridolfi that was relevant to
12 the investigation was something you relied on Pam Arnold for
13 after Laurie Gutberlet left, right?

14 A. Yes. She was the -- what I would refer to as the handler
15 of Lisa Ridolfi. She was -- it's always been Medicaid's
16 source, Lisa Ridolfi, so it maintained that.

17 Q. You trusted Pam Arnold, right?

18 A. I trusted that she was a professional. I really didn't
19 know her. I had never worked with her before the case. But
20 she was a hard worker, and yeah, I trusted everybody on my
21 team. I have to.

22 Q. And you have no reason to believe that Pam Arnold would
23 withhold a material fact from you, right?

24 A. I would hope not. Because we're all professionals on the
25 investigative team, so I would hope no one would hold anything

1 back --

2 Q. Right.

3 A. -- from any of us.

4 Q. So if there was information that someone who was
5 interviewed had a financial interest in seeing Mr. Annappareddy
6 prosecuted, that's something you would have expected your
7 fellow core investigation team members to tell you, right?

8 A. I would insist on it, yes.

9 Q. All right. We may come back to this topic, but we're
10 going to move on to something different for the moment.

11 Now, I believe you testified earlier that you were not
12 aware that Lisa Ridolfi got a written performance warning in
13 February 2012, right?

14 A. Not for February 2012, correct.

15 Q. Right.

16 And you weren't aware of the one in late August 2012,
17 either, that Ridolfi got, right?

18 A. No, I was not.

19 Q. Okay. And you weren't aware that the written performance
20 warning that Lisa Ridolfi got in February of 2012, when she was
21 at the Plumtree store as a pharmacist, involved some of the
22 very issues that Mr. Annappareddy was later accused of?

23 MR. EISER: Objection.

24 THE COURT: Yes.

25 MR. EISER: He's just described this performance

1 warning, which is not an exhibit, it has not been marked, it
2 has not been disclosed in discovery, and he just described into
3 the record what it was about.

4 **THE COURT:** That's not an exhibit that's coming?

5 **MR. GREENBERG:** I think it will come in. I know it
6 was filed in the criminal case. I know the Government has it.

7 **THE COURT:** But it's not on the Plaintiff's exhibit
8 list?

9 **MR. GREENBERG:** Let me check. Actually -- actually,
10 it is. But --

11 **THE COURT:** You're asking her whether she knew about
12 it or not?

13 **MR. GREENBERG:** Yes, I'm just asking whether she knew
14 about it.

15 **THE COURT:** All right. Well, I don't see a problem
16 with that.

17 **MR. EISER:** I don't either, but that wasn't the
18 question. First, he summarized what was supposedly in it --

19 **THE COURT:** Well, don't summarize the contents. It
20 might be a best evidence rule issue if you summarize the
21 contents. Just ask her if she knew about it, and move on.

22 **BY MR. GREENBERG:**

23 **Q.** Were you aware that this February 2012 performance warning
24 that Lisa Ridolfi never told you about -- well, because she
25 never told you about it, you don't know what it said, right?

1 A. All I can say is I don't recall reading a Lisa Ridolfi
2 report by Medicaid that -- that she disclosed that there was
3 any such performance warning in 2012.

4 Q. Okay. Why don't we -- why don't you turn to Tab -- so
5 this is --

6 MR. GREENBERG: Your Honor, this is kind of maybe
7 getting into the territory where we need to stop the clock,
8 since this is an evidentiary issue.

9 THE COURT: All right.

10 Stop the clock.

11 MR. GREENBERG: So the Government has stipulated to
12 authenticity, but otherwise has not stipulated to admissibility
13 of this performance evaluation.

14 THE COURT: What's the objection?

15 MR. EISER: The witness has said she didn't see it,
16 has never seen it. This would apparently be an attempt at
17 impeachment, but it's not impeachment because she hadn't said
18 anything about it. If it were impeachment, it would be
19 impeachment of a witness on -- with extraneous matter on a
20 collateral issue.

21 MR. GREENBERG: Objection, Your Honor. I would ask
22 the witness be excused. Because this is kind of coaching.

23 THE COURT: Let me just ask, isn't this witness going
24 to be called later as a live witness?

25 MR. GREENBERG: Well, we don't know, because the

1 Government hasn't given us their witness list at all.

2 **MR. PHELPS:** Your Honor, she may or may not be. She
3 was on our list that we disclosed in our pretrial order.

4 **THE COURT:** I was going to say, you're supposed to
5 have exchanged witness lists; did that not happen?

6 **MR. GREENBERG:** The witness lists were exchanged. We
7 gave them dates for all but two of our witnesses in our case in
8 chief. They haven't give us dates for anybody.

9 **THE COURT:** But they've given you the names, though.

10 **MR. GREENBERG:** They have given us the names, yes.

11 **THE COURT:** All right. We don't know if the witness
12 is subject to this performance ordinance or performance review
13 is going to be called later?

14 **MR. GREENBERG:** We don't know because --

15 **THE COURT:** She said she didn't know about it, so why
16 do we need to dwell on it here with this witness?

17 **MR. GREENBERG:** All right, Your Honor. Fair enough.

18 **THE COURT:** All right.

19 Start the clock.

20 **BY MR. GREENBERG:**

21 **Q.** Ms. Lating, one of your responsibilities as the leader of
22 the Pharmacare investigation team was to listen to audio
23 recordings that Lisa Ridolfi made, right?

24 **A.** When I had time, yes.

25 **Q.** Why don't we turn to what is Plaintiff's Exhibit 58. It

1 is already admitted. It's a transcript that you prepared,
2 Ms. Lating.

3 A. Okay. Yes.

4 Q. And you understood when you worked in the Pharmacare
5 matter -- I'll get to the document in a second.

6 You understood when you worked in the Pharmacare matter
7 that if someone was taking prescriptions that weren't delivered
8 and hiding them, it would be impossible to reverse the claims
9 for those prescriptions if they weren't delivered, right?

10 A. Well, that would be fair to say.

11 Q. So in this audio recording had, you -- it's dated -- this
12 is the first page of Plaintiff's Exhibit 58. It's dated
13 June 24th, 2013, right?

14 A. Yes.

15 Q. And it says "Drafted by Maura J. Lating," right?

16 A. Yes.

17 Q. And if you turn to what's marked as Page 2, it's actually
18 two pages after that page. If you look at the bottom, the
19 second to last line includes Ridolfi saying, quote, "We gotta
20 hide prescriptions," end quote, right?

21 A. Yes.

22 Q. And you, Ms. Lating, never asked Ms. Ridolfi what she
23 meant by that, did you?

24 A. I --

25 Q. Did I call you Ms. Ridolfi? I'm sorry if I did. Let me

1 rephrase the question.

2 You, Ms. Lating, never asked Ms. Ridolfi what she meant by
3 "We gotta hide prescriptions," did you?

4 A. No. That would have been -- if we felt the need to ask
5 her, we would have delegated and tasked Pam Arnold to do that.

6 Q. There's nothing in the file for Pharmacare about that
7 happening, is there?

8 A. I'm sorry, there's nothing in the file? My file?

9 Q. You have a remarkable memory of the events during the
10 investigation. You remember the address of the Old Emmorton
11 store. You remember a lot of things.

12 A. Because I reviewed my affidavit in preparation for today,
13 so yes, I do know the addresses.

14 Q. But something like this, asking Ms. Ridolfi what she meant
15 by "We gotta hide prescriptions," that's something that would
16 be documented if it happened, right?

17 A. If we were concerned about it.

18 Q. Okay. So you weren't concerned about it?

19 A. I was not.

20 Q. Okay. We can move on from this one for now.

21 **MR. GREENBERG:** Court's indulgence, one second.

22 **BY MR. GREENBERG:**

23 Q. All right. Let's talk about the undercover operations
24 that were done in the Pharmacare investigation.

25 You knew that -- actually, right around the time when you

1 joined the Pharmacare investigation, January 3rd and 4, 2013,
2 there were undercover operations in three Pharmacare stores,
3 right?

4 A. Medicaid was doing that on their own. They had already
5 set it up before I even became involved in the case. So I had
6 no role in even orchestrating this undercover operation.

7 Q. None of that was in response to my question. I just asked
8 if you knew about it.

9 A. I knew about it, yes.

10 Q. And you knew that the undercover operations were done at
11 three stores, right?

12 A. Three stores, correct.

13 Q. In fact, you mentioned in one of -- at least one of your
14 drafts of the Google affidavit, that there were undercover
15 operations at Mt. Clare, Park Heights, and Plumtree, right?

16 A. Correct.

17 Q. But then your final affidavit only mentioned the
18 undercover operation at Plumtree, right?

19 A. Yeah, that's correct.

20 Q. And you knew that there were pharmacists of Indian origin
21 at the Mt. Clare pharmacy and the Park Heights pharmacy, right?

22 A. As I sit here today, I don't recall that. I don't recall
23 their names. I don't recall that.

24 Q. And you knew that Lisa Ridolfi was the pharmacy manager at
25 the Plumtree store, right?

1 A. Correct.

2 Q. And the pharmacist there?

3 A. Correct.

4 Q. And you knew she was white?

5 A. Yes.

6 Q. And you knew that the Plumtree store was the only one of
7 those three stores where the undercover operation succeeded by
8 getting refills that were billed for but not picked up by the
9 fake patients, right?

10 A. I'm -- I'm not familiar with the results of their
11 undercover operation.

12 Q. Well, let's turn to -- let's turn to Tab 26, please.

13 A. Twenty-six.

14 Okay.

15 Q. So this is a memo from Laurie Gutberlet to the Pharmacare
16 file dated February 12, 2013, right?

17 A. Yes.

18 Q. Over a month after you started working on the
19 investigation, right?

20 A. Yes.

21 Q. Subject is "Follow-up Report Number 1 for Activity for
22 Undercover Prescriptions," right?

23 A. Yes.

24 Q. This memo is only four pages long, right?

25 A. Yes.

1 Q. And one of those pages is just two big photos, right?

2 A. Yes.

3 Q. There's only two pages of text, right?

4 A. Correct. And there's a table.

5 Q. Okay. Three pages, if you count the table, right?

6 A. Right.

7 Q. All right. And if you look at that table, it mentions the
8 undercover operations. See how there's a -- the first column
9 at the top says "Date RX Presented"?

10 A. Yes.

11 Q. On the left.

12 That's date prescription presented, right?

13 A. Yes.

14 Q. And they're all July of -- January 3rd or 4, 2013, right?

15 A. Yes.

16 Q. That's right around when you started on the Pharmacare
17 investigation, right?

18 A. Yes.

19 Q. And the locations are identified two columns to the right,
20 aren't they?

21 A. Yes.

22 Q. And it talks about the action, which agent, Pam Arnold or
23 Shannon Beatty, B-E-A-T-T-Y, dropped off the prescriptions,
24 right?

25 A. Yes.

1 Q. And you knew the prescriptions had refills on them, right?

2 A. Yes. I think they set it up, there was going to be at
3 least four refills, or multiple refills at least, yes.

4 Q. And the purpose, you knew -- at least by the time you read
5 this memo, presumably right after it was drafted and you got
6 it -- well, you did read your memos promptly when you got them,
7 right?

8 A. I read the memos promptly? Yeah -- yes, for the purpose
9 of I was drafting the affidavit, yes.

10 Q. Right.

11 And so these undercover operations were important, right?

12 A. Yeah. Well, I wanted to see what resulted of them, see if
13 it was something I wanted to put in the affidavit, correct,
14 yeah.

15 Q. Right.

16 And you did put the Plumtree one in the affidavit, right?

17 A. Because something came out of it. They billed for a
18 refill that she didn't -- Pam Arnold didn't pick up. I believe
19 it was Pam Arnold under the name of Janet Justowski [sic] or
20 something.

21 Q. Janet Jaswinski, right?

22 A. Jaswinski.

23 Q. I think it's stated in the chart?

24 A. Yes.

25 Q. And so the two stores where nothing came out of it, even

1 though that was in one of your earlier drafts of the affidavit,
2 you didn't put that in the final version, right?

3 A. Why would I?

4 Q. All right. We can move on from this exhibit, I think, for
5 the moment.

6 Let's go back and talk about Dennis Tokofsky a little bit
7 more. You testified yesterday that in his *qui tam* that we
8 showed you -- do you remember we talked about the *qui tam*
9 complaint?

10 A. I do.

11 Q. The one he filed the day after he met with Laurie
12 Gutberlet for the first time?

13 A. Yes.

14 Q. And in that *qui tam* complaint, Dennis Tokofsky alleged
15 that he had taken written notes when he saw certain
16 prescriptions in January 2012, right?

17 A. Yes.

18 Q. That is directly contrary to what he told Laurie Gutberlet
19 the day before, isn't it?

20 A. In what respect?

21 Q. Well, you knew, because you studied Laurie Gutberlet's
22 memo carefully, that Dennis Tokofsky told Ms. Gutberlet that he
23 took no contemporaneous notes, right?

24 A. If I could refer to his first interview, which was,
25 like --

1 Q. Sure.

2 A. -- on about June 19th, I think it was. 2012.

3 Q. Well, June 19, 2012, is the date he filed the *qui tam*
4 complaint. First meeting with Laurie Gutberlet was the
5 afternoon the day before.

6 A. Okay. I thought the filing was June 22nd, but okay. That
7 was my recollection.

8 Q. Well, we covered this yesterday. We won't need to go over
9 it again.

10 But Government's Exhibit 1 in the other binder, please.

11 A. Exhibit 1. Sure.

12 Q. And this is Laurie Gutberlet's memo dated June 26, 2012,
13 on her interview of Dennis Tokofsky with his lawyer on the
14 phone, on June 1st, 2012, right?

15 A. Yes.

16 Q. And if you turn to Page 14 --

17 A. I'm sorry, what did you -- I thought you said Exhibit 1.
18 What Exhibit --

19 Q. Government's Exhibit 1. It's the other binder that has
20 the Defendant's exhibits.

21 A. Sorry about that.

22 Q. No problem.

23 A. Okay.

24 Yes.

25 Q. All right. You see how there's this really long paragraph

1 under the underlined, bold heading in italics, "Discovery of
2 Undelivered Prescriptions," on Page 14?

3 A. Yes.

4 Q. And do you see maybe two-thirds of the way down, roughly,
5 there's a sentence maybe 10 lines from the bottom, maybe a
6 little less, where it starts with "While Tokofsky"? It's being
7 highlighted on the screen for you.

8 A. Yes.

9 Q. It says, "While Tokofsky did not record any of the
10 information he discovered at that time, he was able to remember
11 four different patients' names." Quote, end quote, right?

12 A. Yes.

13 Q. And that's referring to this incident that he reported in
14 January of 2012, right?

15 A. Yes.

16 Q. The same one that he alleged in the *qui tam*, right?

17 A. It's referred to in the *qui tam*, correct.

18 Q. Same incident, allegedly, right?

19 A. Yes, uh-huh.

20 Q. And he told Ms. Gutberlet, the day before he filed the *qui*
21 *tam*, he didn't take any notes, right?

22 A. He says, "I remember four different patient names."

23 Q. "While Tokofsky did not record any of the information he
24 discovered at that time . . ." Didn't take any notes, right?

25 A. But if you continue, it says, "The names will be

1 considered when conducting the paid claims analysis."

2 Q. Ms. Lating, the question is: You agree Mr. Tokofsky did
3 not tell Ms. Gutberlet that he took any notes, right? He told
4 her the opposite.

5 A. He said, "I didn't record any of the information, but I
6 remember the four different names."

7 Q. Right.

8 And you understood that -- you understand that meant he
9 took no notes at the time, right?

10 A. Okay.

11 Q. You agree?

12 A. Based on what she put here, yes.

13 Q. All right. And he did not tell Laurie Gutberlet that he
14 had this magical memory where he remembered five different
15 six-digit prescription numbers that he didn't take notes on,
16 did he?

17 A. No.

18 Q. We can move on from this one.

19 You understood, with all your experience in white-collar
20 criminal matters, healthcare fraud matters, you understood that
21 there was -- when there was a whistleblower who filed a
22 *qui tam*, that is a key witness in the investigation, right?

23 A. I disagree with that.

24 Q. Okay. You think a whistleblower is no different than any
25 other witness, or you thought that in 2013?

1 A. A *qui tam*, a whistleblower is nothing more than if someone
2 calls the FBI and they say, "My neighbor is selling drugs." I
3 need to, or an investigator needs to sit down with them and get
4 the information directly from them. A *qui tam* is something a
5 lawyer filed, okay. I need to hear right from that person, the
6 complainant. So yes, *qui tams* trigger an inquiry, an
7 investigation. But they always -- you know, not always become
8 the key witness in the case. They may direct us to someone
9 that maybe knows a lot more than them.

10 So -- so if you're telling me do I consider
11 Dennis Tokofsky, 10 years later, to be the key, key witness in
12 this case? No.

13 Q. Ms. Lating, I would ask you to please listen to my
14 question.

15 A. Okay.

16 Q. Just answer my question.

17 I didn't say he was the key witness. I said he was a key
18 witness. You agree with that, right? He started the
19 investigation when he met with Ms. Gutberlet, right?

20 A. He triggered an investigation. I would say he is a key in
21 that respect. He triggered a federal investigation of
22 Pharmacare and CareMerica, correct.

23 Q. Let's turn to a different topic.

24 Back to CareMerica.

25 A. Sure.

1 Q. Plaintiff's Exhibit 44, please, Tab 44.

2 A. Forty-four?

3 Q. Yes, ma'am.

4 Ms. Lating, this is an email chain on May 20th, 2013,
5 right?

6 A. Yes.

7 Q. And you wrote the earliest email in the chain, right?

8 A. Yes.

9 Q. And you sent it to Robert Mosley and Pam Arnold and
10 Cathy Pascale, right?

11 A. Yes.

12 Q. Your email is timestamped 9:58 a.m., May 20, 2013, right?
13 That first email?

14 A. Yes.

15 Q. Okay. In the last paragraph, you wrote, "I can work on
16 customers" -- looks like "C.G." -- "and anyone else summary if
17 you want. We do need to identify one or two CareMerica
18 customers who were former Plumtree where the billing fraud
19 involving Med-4 drugs are continuing. Do we have that yet? I
20 am available tomorrow afternoon if we want to meet, or I can
21 just continue emailing additions to affidavit." Right?

22 A. Yes.

23 Q. And then Pam Arnold replied, 16 minutes later, "I am not
24 sure how we are going to get that information unless we do a
25 couple of interviews, since Lisa" -- meaning Lisa Ridolfi --

1 "is not privy to the CareMerica information. I know that BS is
2 now handled through CareMerica but do not know if he has been
3 receiving his meds." Right?

4 A. Yes.

5 Q. And that was an email addressed to you, right?

6 A. Yes.

7 Q. And then you responded within less than three hours, looks
8 like 12:54 p.m. that same day, right?

9 A. Yes.

10 Q. And you wrote, "Do we have anyone that has been
11 interviewed that had drugs billed by Plumbtree that are having
12 these drugs billed by CareMerica now? Maybe" -- and then you
13 go on to talk about Express Scripts and private insurance,
14 right?

15 A. Yes.

16 Q. And Pam Arnold responded pretty soon afterwards and wrote,
17 someone whose last name starts with a K was never interviewed.
18 And then she said, "We really did not do a lot of recipient
19 interviews." Right?

20 A. Yes.

21 Q. And I believe you've already acknowledged, no one in the
22 investigation team ever did interview anyone about their
23 experience with CareMerica, right?

24 A. That's my recollection.

25 Q. Okay. We can turn -- stop with that exhibit for the

1 moment.

2 A. Sure.

3 Q. Ms. Lating, you communicated with folks at Immigration and
4 Customs Enforcement and USCIS in regard to the Pharmacare
5 matter, right?

6 A. Several times.

7 Q. And you communicated with them about Mr. Annappareddy's
8 immigration status, among other things, right?

9 A. And other people's as well, correct.

10 Q. And you, at no time, ever told any immigration official to
11 lift any hold that had been put on Mr. Annappareddy's Green
12 Card application, did you?

13 A. To lift any hold?

14 Q. Correct.

15 A. Or to hold?

16 Q. To lift any hold.

17 A. No.

18 Q. You never told them that?

19 A. No.

20 Q. You mean "correct"?

21 A. Correct, I did not do that.

22 Q. Now, when you prepared -- actually, when you prepared the
23 Lating affidavit, you were aware that Pharmacare transferred
24 significant amounts of inventory between and among stores,
25 right?

1 A. I knew that from reading reports, correct, Medicaid
2 reports.

3 Q. And that was reported by at least Caitlin Biemer and
4 Lisa Ridolfi, if not others, right?

5 A. I think some others, but yes.

6 Q. Yeah. So, I mean, that was an established fact.

7 A. Yes.

8 Q. Let's talk about another Plaintiff's exhibit that's
9 already in evidence. It's Plaintiff's Exhibit 42, ma'am.

10 A. Okay.

11 Q. All right. You see how this is a short email chain with
12 two emails in it?

13 A. Yes.

14 Q. The first email is from Jeremy Dykes, May 17, 2013,
15 5:09 p.m.?

16 A. Yes.

17 Q. Addressed to, among others, Robert Mosley and Pam Arnold,
18 right?

19 A. Yes.

20 Q. And then Pam Arnold forwards it to you and some other
21 folks, right?

22 A. Yes.

23 Q. And she forwards it 10 minutes after she got it, right?

24 A. Yes.

25 Q. And you're the first person in the email, right?

1 A. I'm not sure the significance of that, but yes, I am the
2 first one on --

3 Q. I didn't ask you about the significance --

4 A. Okay.

5 Q. -- I asked if you were the first person?

6 A. Yes, I am.

7 Q. And Mr. Dykes, he was a civil Assistant Attorney General
8 in the MFCU, right?

9 A. Yes. Yes.

10 Q. And he created what he called -- I'm just going to
11 paraphrase for the efficiency, he created a spreadsheet that
12 counted all of the inventory for Pharmacare stores
13 collectively, right? He counted transfers.

14 A. Yes.

15 Q. And Pam Arnold forwarded that to you 10 minutes after she
16 got it, and wrote one sentence, "This is not what we hoped
17 for." Right?

18 A. Yes.

19 Q. And that's when transfers were counted, "This is not what
20 we hoped for." Right?

21 A. Yes, that's her statement.

22 Q. And if you look on the next page, look at Atripla, it has
23 a 90 next to it. Do you see the difference part is in black on
24 the far right?

25 A. Yes.

1 Q. You see how it's plus 17,019 units?

2 A. Yes.

3 Q. And turn to the next page. You see Truvada on 468?

4 A. Yes.

5 Q. Far-right, column U, plus. It's in the black also, right?

6 A. Yes.

7 Q. It's in the thousands, right?

8 A. Yes. According to this table, yes.

9 Q. Okay. Now, let's go back to this email, "This is not what
10 we hoped for."

11 You didn't respond to that email, did you?

12 A. No. This was just an email forwarded to me. I wasn't on
13 the original chain.

14 Q. You didn't say, "Hey, we better tell MEDIC to count those
15 transfers, because otherwise they're really off," did you?

16 A. That was never my role in this case with MEDIC.

17 Q. You were on the team, right?

18 A. MEDIC was not my role in this case.

19 Q. You were the leader of the team, weren't you?

20 A. And everybody had their delegated role.

21 Q. The buck stopped with you, as the leader of the team,
22 didn't it?

23 A. No. Robert Mosley was the leader of the MEDIC analysis.

24 Q. So you, as the leader, passed the buck to Robert Mosley?

25 A. It's not passing the buck. When you're part of an

1 investigative team, no one can do everything. So you delegate
2 to each other their expertise. And his expertise was dealing
3 with MEDIC in his cases over the years. So yes, he was the
4 contact person for MEDIC. And, as you can see, I was forwarded
5 by Pam Arnold later on, but I wasn't on the initial chain by
6 Jeremy Dykes.

7 Q. Ms. Lating, you were the leader of the team. You
8 testified to that yesterday, right?

9 A. I was the leader of the --

10 Q. It's a "yes" or "no" question.

11 A. Yes, I was. Yes.

12 Q. You were the leader of the team?

13 A. Absolutely.

14 Q. The buck stopped with you ultimately, right?

15 A. Buck stopped with me in what respect?

16 Q. You're the leader of the team.

17 A. And what does that mean?

18 Q. Well, let me ask you a different question. Maybe we can
19 get there a different way.

20 If you saw something seriously erroneous in the Pharmacare
21 investigation, as the leader, it was your duty to fix it,
22 right?

23 A. Absolutely not. It's Robert Mosley, as the leader of the
24 MEDIC analysis. I delegated to him. I've never been involved
25 in a MEDIC analysis. So he is the one, can see what needs to

1 be done to rectify this or deal with this.

2 Q. So your view is you can just disregard this, it was
3 Mosley --

4 A. No. This was forward to me as "FYI Maura," but you will
5 not find any comment by me to say what's going on here? This
6 is Robert -- this should be Robert dealing with this issue.

7 Q. You see massive surpluses of Atripia and Truvada, you're
8 the leader of the team, and your view is "I don't need to do
9 anything about this," right?

10 A. Because I trust the health and human service agent to
11 rectify it, deal with it, talk to MEDIC, and let's get this
12 done, so . . .

13 Q. You trusted him, but you didn't forward the email to
14 Mosley, did you? He's not copied, is he?

15 A. Robert Mosley is on the original email from Jeremy Dykes.

16 Q. You didn't forward this email from Pam Arnold, who wasn't
17 even involved with MEDIC, she realized there was something
18 seriously wrong, right?

19 A. I -- I have no idea what her mindset was on letting me
20 know about this.

21 Q. "This is not what we hoped for." Right? That's what she
22 wrote. One sentence.

23 A. The only -- I have no idea what her mindset was except she
24 realized that we weren't included on the original one from
25 Jeremy Dykes, and this was a FYI.

1 Q. And so as that FYI, you didn't tell Special Agent Mosley,
2 another core member of the investigation team who thought,
3 "This is not what we hoped for," and transfers are counted, did
4 you?

5 A. No, I would trust him to handle it. He was my go-to for
6 the MEDIC analysis. I had enough on my plate not to have to
7 deal with MEDIC analysis, which I've never been involved in any
8 of my healthcare fraud cases. So yeah, I trusted him. I've
9 known him for 15-plus years at the time, and he's on this
10 original email because this is Jeremy Dykes saying -- these are
11 the core people on this email from Jeremy Dykes, those are the
12 core people that you should be asking these questions about the
13 significance of this table.

14 What I was forwarded was basically FYI, that's it. But
15 when I read this, this was not something Maura Lating needed to
16 do deal with. This was something Robert Mosley, Cathy Pascale,
17 Pam Arnold, Mike DiPietro, Carol Kelly, that's the core group
18 that should have been, "What do we need to do, and what do we
19 need to tell MEDIC," and so forth.

20 So those are questions for any of those people in the
21 original chain, not me.

22 Q. Well, you were aware during the Pharmacare investigation
23 that Cathy Pascale considered Jeremy Dykes, Michael DiPietro,
24 and Robert Mosley to be part of what she called "the civil
25 team," right?

1 A. I never referred to them --

2 Q. That would be false?

3 A. They were more the MEDIC team, the MEDIC contact team, the
4 MEDIC analysis team.

5 Q. Okay. So "civil team" would be inaccurate?

6 A. I don't recall them being referred to as "the civil team."
7 They were the team that would be --

8 Q. That's not my question. Would it be inaccurate --

9 A. It -- I don't recall that term being referred to --

10 Q. That's not my question.

11 Would it be inaccurate to refer to them as "the civil
12 team"?

13 A. I never referred to them as "the civil team."

14 Q. That's not my question, either.

15 Would it inaccurate to refer to Robert Mosley, who did
16 criminal enforcement for the DHHS-OIG, and these two civil
17 attorneys as "the civil team" just because two of them were
18 civil attorneys?

19 A. You need to rephrase the question because I don't know
20 what you -- did I ever refer to them as "the civil team"? No,
21 did I not.

22 Q. And Robert Mosley, you agree, worked on criminal
23 investigations and civil investigations.

24 A. And civil, correct.

25 Q. Right.

1 So calling him just a civil person is inaccurate, right?

2 A. Correct.

3 Q. I think we can move on for this one.

4 MR. GREENBERG: Your Honor, I think this is probably a
5 good time for our morning recess if Your Honor is amenable.

6 THE COURT: All right. We'll take a 10-minute recess.

7 THE CLERK: All rise. This Honorable Court is now in
8 recess.

9 (Whereupon, a recess was taken from 10:50 AM to 11:07 AM.)

10 THE CLERK: All rise. This Honorable Court resumes in
11 session.

12 MR. GREENBERG: Is Your Honor ready?

13 THE COURT: Please, yes.

14 BY MR. GREENBERG:

15 Q. Ms. Lating, you've mentioned a couple of times that it's
16 been about a decade, 10 years, I think you said, since your
17 work in the Pharmacare matter, right?

18 A. Close to 10, yes.

19 Q. Close to a decade.

20 And you remember that -- you know, there are some things
21 you can't remember, right?

22 A. I'm doing my best to remember, yes.

23 Q. But there are some things you just don't remember because
24 it's been a while?

25 A. Yes.

1 Q. And some of those things relate to different witnesses,
2 right?

3 A. Yes.

4 Q. Including Lisa Ridolfi, right?

5 A. I can't say for sure. I don't know what I forget or what
6 I remember. I mean, if you have something to ask me, please
7 ask me.

8 Q. Well, did you know that Lisa Ridolfi was written up in
9 February 2012 for allowing prescription bins to pile up in her
10 pharmacy?

11 MR. EISER: Objection. Asked and answered.

12 THE WITNESS: I don't recall that.

13 THE COURT: Overruled. I'll allow it.

14 Go ahead.

15 BY MR. GREENBERG:

16 Q. You don't recall that? Okay.

17 A. I don't recall that.

18 Q. Please turn to Plaintiff's Exhibit 8, Tab 8.

19 MR. GREENBERG: And, Your Honor, just for the record,
20 this has been, I think, authenticated but not admitted.

21 THE COURT: All right. There's an objection to this?

22 MR. EISER: Yeah. There's no basis to admit it.

23 MR. GREENBERG: Your Honor, I can use anything to
24 fresh recollection. But I would ask if we're going to have
25 these evidentiary debates, the witness be excused, please.

1 **THE COURT:** Step out, if you would, please.

2 **THE WITNESS:** Yes, Your Honor.

3 (Witness exits.)

4 **THE COURT:** Stop the clock.

5 All right. First of all, if a document is used to refresh
6 a witness's recollection, it doesn't have to come in as an
7 exhibit if it, in fact, refreshes recollection. If it does
8 not, if it does not refresh a recollection, do you still want
9 to offer it?

10 **MR. GREENBERG:** At this moment, I probably would want
11 to offer it. Whether it would be allowed in, I don't know.
12 But, you know, we can talk about that.

13 **THE COURT:** What's the objection to it coming in?

14 **MR. EISER:** She hasn't said that she didn't recall.
15 She hasn't asked for a document. She said "I wasn't told about
16 this" --

17 **THE COURT:** Well, assuming it doesn't refresh her
18 recollection, the Plaintiff wants to introduce it as a
19 Plaintiff's exhibit, so what would be the objection? No
20 foundation?

21 **MR. EISER:** Yes.

22 **MR. GREENBERG:** All right, Your Honor. Here's the
23 relevant --

24 **THE COURT:** He said objection on laying a foundation,
25 not relevance.

1 Am I correct, Mr. Eiser?

2 MR. EISER: Yes, Your Honor.

3 MR. GREENBERG: Well, I think -- respectfully, I think
4 there is a foundation based on an exhibit in evidence.

5 Plaintiff's Exhibit 48 is a list of search terms that
6 Ms. Lating prepared for her review or that she led in the
7 Google emails, "bins" is one of the words. That was just for
8 searching in Mr. Annappareddy's emails, Your Honor.

9 And Exhibit 8, "bins" is one of the words.

10 THE COURT: Well, that doesn't authenticate it. That
11 just says -- that just proves it came up with a word search --

12 MR. GREENBERG: They've stipulated to authenticity,
13 Your Honor.

14 THE COURT: Well, then I misunderstood.

15 What's the objection?

16 MR. EISER: This document, he hasn't set this up,
17 there is no foundation. She said, "I never knew that" --

18 THE COURT: Well, he just said you stipulated to its
19 authenticity. That's the same thing as foundation. So what's
20 the objection?

21 MR. EISER: Well, again, she has not -- this is not to
22 her.

23 THE COURT: I understand.

24 MR. EISER: It wasn't sent to her, she didn't have it.

25 THE COURT: Well, Mr. Greenberg -- now wait.

1 Mr. Greenberg just said you stipulated as authenticity. That's
2 the same thing as foundation. So do you not stipulate as to
3 authenticity?

4 **MR. EISER:** I mean, we've stipulated -- they provided
5 a bunch of internal emails that they sent to each other. We
6 said, okay, we're not going to make your IT people come in and
7 say that that's -- that is what it is.

8 But it's still not relevant to anything that's happening
9 here.

10 **THE COURT:** Well, now, relevance is a different
11 objection. So we have a relevance objection.

12 What does this go to show? What is this letter relevant
13 to the case?

14 **MR. GREENBERG:** Relevant for multiple reasons. One,
15 on the second page of the exhibit, the actual performance
16 evaluation for Lisa Ridolfi dated February 16, 2012, as a
17 pharmacy manager for the Plumtree store, she's present when
18 this evaluation was given. She got this warning, and she
19 didn't tell the agents.

20 It's also relevant because of the email search terms. The
21 word "bins" in number three --

22 **THE COURT:** I don't think just something showing up on
23 a search term for words authenticates something.

24 **MR. GREENBERG:** No, Your Honor. They stipulated to
25 authenticity.

1 **THE COURT:** All right. So we're past authenticity.

2 Why is it relevant in terms of this witness being on the
3 stand? She says she doesn't know about it. Can't you offer it
4 later when your client is on the stand?

5 **MR. GREENBERG:** Your Honor, respectfully, we think
6 it's important to question former Special Agent Lating about --

7 **THE COURT:** She says she did not know about it. You
8 can try to beat her over the head with this, but she didn't
9 know about it. So why are we wasting time on this?

10 **MR. GREENBERG:** Well, Your Honor, she didn't actually
11 just say that, respectfully. She said "I don't recall that,"
12 or something along those lines.

13 **THE COURT:** All right. Well, let's bring her back and
14 let's see if it refreshes her recollection. If it doesn't, I'm
15 going to sustain the objection, and you'll have to put it
16 through in a later witness. It'll come in eventually, I'm
17 sure.

18 **MR. GREENBERG:** May I just ask one clarification
19 question? If -- when we're talking about the Google emails and
20 the search terms, if that would be a different opportunity, a
21 different avenue, perhaps, to lay the relevance, make the
22 relevance point.

23 **THE COURT:** Say, again? I don't think that because
24 something popped up on an email using a search term makes it
25 relevant or authenticated.

1 **MR. GREENBERG:** So --

2 **THE COURT:** The computer is just saying here's a
3 document that has this word in it. That doesn't authenticate
4 it.

5 **MR. GREENBERG:** Your Honor, maybe I'm not explaining
6 this well. Let me try it -- I apologize for that.

7 So the search terms were prepared to search
8 Mr. Annappareddy's emails. There is a section of the draft
9 Lating affidavit originally and multiple drafts that said --
10 looked at emails. There ended up being no emails in the final
11 draft, final Lating affidavit. And this is highly relevant
12 because Lating --

13 **THE COURT:** I think the fact that this whistleblower
14 was disciplined or sanctioned or reprimanded is relevant to the
15 case. I certainly think it is. I just don't know that we need
16 to bog down with it with this witness when she doesn't know
17 about it.

18 **MR. GREENBERG:** But, Your Honor, what I'm trying to
19 get at is that because of the search terms that Ms. Lating
20 prepared, Exhibit 48 --

21 **THE COURT:** So she should have known about it. That's
22 where you're headed?

23 **MR. GREENBERG:** Well, we believe she did know about
24 it.

25 **THE COURT:** All right. Well, let's bring her back and

1 see if you can refresh her recollection. You can ask her about
2 it, then we need to move on.

3 **MR. GREENBERG:** Yeah. And if Your Honor is amenable,
4 I mean, I would like to -- if she says she doesn't remember,
5 I'll move on for now, but I would like to circle back to the
6 Google emails, if that's okay.

7 **THE COURT:** All right.

8 **MR. GREENBERG:** Thank you, Your Honor.

9 **THE COURT:** Bring the witness back, please.

10 (Witness returns.)

11 **THE COURT:** All right. Please proceed.

12 Start the clock.

13 **BY MR. GREENBERG:**

14 **Q.** Ms. Lating, you testified before that brief break that you
15 don't recall, or something along those lines, that Ms. Ridolfi
16 was criticized for allowing prescription bins to pile up in
17 February 2012, right?

18 **A.** I -- I don't recall that at all.

19 **Q.** Okay. Let's look at -- I think it's on the screen.

20 Actually, let's look at -- so this is a document to

21 Mr. Annappareddy and Wayne Dyke and Dennis Tokofsky -- his name
22 is misspelled for some reason -- is copied.

23 Do you see that?

24 **A.** Yes.

25 **Q.** And it's from Shirish Patil, P-A-T-I-L, right?

1 A. Yes.

2 Q. It says, "shirish@pharmacare.us," right?

3 A. Yes.

4 Q. And that's one of the email addresses that you put in the
5 Google search warrant, right?

6 A. Yes. That would have been one of them.

7 Q. All right. And the attachments says "writtenwarning.doc,"
8 right?

9 A. Yes.

10 Q. And the subject says "Performance Evaluation for Lisa,"
11 right?

12 A. Yes.

13 Q. If you could please turn to the next page --

14 MR. EISER: Your Honor, the question was: Does this
15 refresh your recollection? That's what we're here for.

16 Mr. Greenberg just read the first page of the document and is
17 now going on to the rest.

18 BY MR. GREENBERG:

19 Q. Ms. Lating, I'll point you to the third bullet point on
20 the actual performance evaluation.

21 MR. EISER: Objection.

22 THE COURT: Go ahead.

23 Overruled for now.

24 Go ahead.

25

1 **BY MR. GREENBERG:**

2 **Q.** Ms. Lating, do you see where it says in part, quote,
3 "Allowing prescription bins to pile up," end quote? In
4 February 2012, this performance evaluation for Lisa Ridolfi.

5 **A.** Number three on the list, "allowing prescription bins to
6 pile up." Right. Okay. I see that.

7 **Q.** And does this refresh your recollection?

8 **A.** No. No, it doesn't.

9 **THE COURT:** All right. Let's move on.

10 **THE WITNESS:** I don't recall this.

11 **MR. GREENBERG:** Okay.

12 Thank you, Your Honor.

13 **BY MR. GREENBERG:**

14 **Q.** Let's just talk briefly about the Google emails.

15 You prepared an affidavit in support of the search warrant
16 for the Google investigation, right?

17 **A.** Yes.

18 **Q.** You identified 14 email accounts, right?

19 **A.** Yes, 14, it ended up being.

20 **Q.** And none of those 14 was Dennis Tokofsky, right?

21 **A.** I don't recall.

22 **Q.** Okay.

23 **A.** I don't recall all 14 email addresses.

24 **Q.** All right. You do recall that one of the email addresses
25 was Mr. Annappareddy's, right?

1 A. Oh, yes, yes.

2 Q. And you do recall that Mr. Annappareddy's email account
3 was prioritized for review, right?

4 A. Reviewed by me, or review by --

5 Q. Well, you were the team leader, whether it was you or
6 whether it was Pam Arnold, one of the two of you were tasked
7 with that, right?

8 A. Yes.

9 Q. And as the leader, you were aware of what was going on
10 with the review, whether you did it or Ms. Arnold did it,
11 right?

12 A. Yes.

13 Q. And you, Ms. Lating, you came up with the list of search
14 terms to search Mr. Annappareddy's emails, right?

15 A. No. It was actually -- I asked for input from the
16 investigative team. I initially came up with a list, and I got
17 their input on what else should we be searching for when we get
18 the Google production.

19 Q. Let's turn to Plaintiff's Exhibit 48.

20 Now, the email -- this is a brief email chain, right?
21 June the 6th, 2013?

22 A. Yes.

23 Q. And the earliest in time email is from you, Ms. Lating,
24 you don't copy anyone on the email, June 6th, 2013, 6:32 p.m.
25 to uslawenforcement@Google.com, right?

1 A. Yes.

2 Q. And the subject is "Erica" -- I guess you're writing to
3 someone named Erica at Google, right?

4 A. That's who I had been conversing with via email.

5 Q. And you were frustrated about the time it was taking to
6 download the emails for the Reddy email account, right?

7 A. Yes. Google had not produced the emails yet, and I was
8 still working on the affidavit, so I was asked Erica, you know,
9 to produce something to me so I could review.

10 Q. And that's because the emails are one of the high
11 priorities for the investigation, right?

12 A. You need to re-- I don't know what you mean by "high
13 priority."

14 Q. Well, you had a whole section in some of the drafts of
15 your affidavit for emails, right?

16 A. My priority in June 2013 was to finish the location
17 affidavit for the six locations.

18 Q. And one of the things you needed to do to finish the
19 location affidavit was to review those emails that you got the
20 search warrant for, right?

21 A. No. I would have liked to get something from Google to
22 review, but that wasn't going to hold up the affidavit. That
23 was not a factor that was going to go hold. I had an email
24 section ready to go to put into the location affidavit if we
25 got the production from Google in time.

1 And this is me telling Google, "Can you at least search
2 these key words and give me something I can review now?"
3 Because we knew the production was going to be huge.

4 Q. So this is June 6th, 2013, that's over a month and a half
5 before you presented the Lating affidavit on July 23rd, 2013,
6 right?

7 A. Yes.

8 Q. And Google did, in fact, produce all the responsive
9 emails, as far as you know, weeks before the affidavit was
10 finalized, right?

11 A. Yes. I think I had done an FD302 about that. I think it
12 was mid-June 2013 possibly -- I don't know, June 21st, 2013, I
13 received the hard drive from them.

14 Q. And that was for all of the 14 email accounts, right?

15 A. Yes.

16 Q. And so once you got that hard drive in mid-June 2013, you
17 promptly divvied up the tasks of reviewing the emails, right?

18 A. It's not an easy process.

19 Q. That's not my question.

20 A. I -- soon after June 2013, did I divvy up the task? No.

21 It took a while for our computer examiner to load it into
22 what was called our Thunderbird software and then load it to my
23 desktop so I can start reviewing it at my desk, and that took a
24 while.

25 Q. Okay. But weeks before the Lating affidavit was

1 finalized, Pam Arnold was tasked with reviewing Reddy's emails,
2 right?

3 A. Among other people. I gave a copy of what Google gave me
4 to Medicaid. I believe HHS, United States Attorney's Office.
5 And then I had a copy.

6 Q. All right. So please turn to Tab 62, Plaintiff's
7 Exhibit 62.

8 A. Okay.

9 Q. This is an email that you sent on July 3rd, 2013, right?

10 A. Yes.

11 Q. And you didn't copy Sandra Wilkinson on this, did you?

12 A. No.

13 Q. It's addressed -- Pam Arnold's name is first, right?

14 A. Yes.

15 Q. And then two names later is Robert Mosley, right?

16 A. Yes.

17 Q. And then Cathy Pascale is mentioned at the end, right?

18 A. Yes.

19 Q. And then you wrote, Ms. Lating, on July 3rd, 2013, "For
20 those that did not know, Google finally produced the emails
21 from the Pharmacare accounts. Pam" -- that's Pam Arnold,
22 right?

23 A. Yes.

24 Q. "Pam has been going through the email accounts with focus
25 on Teddy" -- and that's a typo; it's Reddy, right?

1 A. Yeah. Spellcheck always -- you'll see that often.

2 Q. And did this refresh your recollection about Pam Arnold
3 being the one tasked with going through the email accounts to
4 focus on Reddy?

5 A. Yes. But other people were reviewing, as well.

6 Q. Well, you wrote -- and you wouldn't mislead the others,
7 right? You wrote "Pam has been going through the email
8 accounts to focus on Reddy." Right?

9 A. Yes.

10 Q. And that was true, right?

11 A. If it's in the email, it's true. I don't recall this
12 email. But yes, okay.

13 Q. I understand. It's been nearly 10 years.

14 And then you wrote, "I was thinking maybe we could assign
15 each person an email account to review." Right?

16 A. Yes.

17 Q. And in that review, because the emails were voluminous,
18 you used your search terms, right?

19 A. Are you asking the methodology of how we --

20 Q. Well, let me just sort of, to avoid any semantic issues,
21 I'm talking about, rather than calling them your search terms,
22 the search terms in Plaintiff's Exhibit 48 were used for the
23 review, right?

24 A. Anybody that was reviewing what was produced by Google
25 could look for any search term that they felt they should

1 search. You could search anything.

2 Q. I understand that, Ms. Lating.

3 So the starting point was the search terms, and that
4 explains Exhibit 42, though, right -- 48. I apologize.

5 A. The search terms that I gave Google was because they
6 weren't sure when they were going to produce the production.
7 So to speed up the process, I asked Erica, "Can you at least
8 search these search terms and give me something, like, ASAP."
9 But when everybody on the team start reviewing emails, they
10 could review it by Mr. Annappareddy's email, I didn't --
11 whatever they wanted to do was -- was on them to do.

12 Q. All right. Let's go back to Tab 48, please.

13 A. Okay.

14 Q. Now, this email that you sent early June 2013 to the
15 Google law enforcement person --

16 A. Yeah.

17 Q. -- you said, "Would you be able to do a key word search
18 for just Reddy's email account for these words?" Right?

19 A. Yes.

20 Q. And then you wrote, "The words in red are important ones."
21 Right?

22 A. Yes.

23 Q. And let's go through the list, all right. Just to be
24 clear, this is you asking only for Reddy's email account, at
25 this point, not all 14, right?

1 A. Yes.

2 Q. Because you wanted to at least focus on Reddy's emails,
3 right?

4 A. Yes.

5 Q. You ended up getting all 14, though.

6 A. Yes. I wasn't sure, when I sent this email, whenever we
7 were going to get the production.

8 Q. Understood.

9 Let's go through the list. The first term is "Med-4,"
10 right?

11 A. Yes.

12 Q. And that's in red, isn't it?

13 A. Yes.

14 Q. That means it's an important one.

15 A. Yes.

16 Q. It's the very first term on the list?

17 A. Mr. Greenberg, I'm not sure if I put them in order of
18 importance.

19 Q. It's a "yes" or "no" question.

20 A. Yes. It is a fact, it is the first one on the email.

21 Q. And the second term is "reversals."

22 A. Yes.

23 Q. Third is "auto refill."

24 A. Yes.

25 Q. Next is "reverse," right?

1 A. Yes.

2 Q. Right?

3 A. Yes, yes.

4 Q. Fifth term is "bins," right?

5 A. Yes.

6 Q. And then "removal."

7 A. Yes.

8 Q. "Clinics."

9 A. Yes.

10 Q. "HIV."

11 A. Yes.

12 Q. "Inventory."

13 A. Yes.

14 Q. "Audit."

15 A. Yes.

16 Q. "Storage" and "refill," right?

17 A. Yes, yes.

18 Q. Now, "Med-4" is in red; "reversals" in red; "auto refills"
19 in red; "bins" is in red; "clinics" is in red; "storage" is in
20 red; and "refill" is in red, right?

21 A. Yes.

22 Q. No term on that list says "antipsychotic drugs," right?

23 A. No.

24 Q. And "bins" was one of the terms that either you or Pam
25 Arnold or both searched Reddy's emails for, right?

1 A. This list was for Google to speed up the process and give
2 me a sampling of something we could start reviewing. Because
3 they wouldn't give me a time frame of when they were going to
4 produce it, and I was in the middle of drafting an affidavit.

5 Q. Right.

6 And you wanted to get the emails as soon as possible,
7 right?

8 A. Something from them.

9 Q. Right.

10 A. Even if it's a sampling.

11 Q. And so they provided what you asked for, right?

12 A. No, they didn't.

13 Q. They didn't? Okay.

14 But this list of search terms was used during the review
15 of the Google emails, right?

16 A. I can't say what Pam Arnold or anybody on the team used
17 for search term. This was for the purpose of Google, give me
18 something, a partial production, something, because you can't
19 give me a time frame on when you're going to produce it.

20 Q. Ms. Lating, you're the team leader, right?

21 A. Yes.

22 Q. You sent this list of search terms, right?

23 A. Yes.

24 Q. You led the email review, right?

25 A. I led the email review, correct.

1 Q. Okay. And so at a minimum, these search terms were used
2 during the review, right?

3 A. I would hope so. I hope the team, when they were
4 reviewing the emails, were using some of these suggested key
5 word searches.

6 Q. Let me put it this way, maybe we can cut to the chase.
7 You instructed Pam Arnold to use these search terms, did you?

8 A. I -- unless you have an email that says I did that, I have
9 no recollection of telling her how to read emails. I did
10 instruct everybody that was going to read emails, that you
11 could do key word searches, you could look at a certain
12 person's email account.

13 Q. Okay.

14 A. There was many different ways --

15 Q. Okay.

16 A. -- of reviewing emails from Google.

17 Q. Okay. Thank you.

18 Maybe you didn't -- and I didn't mean to say you only
19 instructed Pam Arnold. But you instructed the folks in the
20 investigation team involved in the email review to use search
21 terms if they wished to, right?

22 A. I'm pretty confident I told them that that would be the
23 easiest way to review, which probably was more than 50,000
24 emails.

25 Q. Okay.

1 A. The easiest way is to do key word searches.

2 Q. Okay. Thank you.

3 A. Okay.

4 Q. And we've established that "bins" is one of the important
5 search terms, right?

6 A. That made the list, yes.

7 Q. And that's just for Reddy's email account, right?

8 A. In this email, I just wanted a sampling of Reddy's --
9 Mr. Annappareddy's email account.

10 Q. Right.

11 But during the actual search, I think it's pretty clear
12 now that the search terms were used and that Reddy's email
13 account was the focus, right?

14 A. Everybody's email account was the focus.

15 Q. But Mr. Annappareddy was the owner than of Pharmacare,
16 right?

17 A. Yes.

18 Q. He was the main target of the investigation, right?

19 A. Yes.

20 Q. So there was a search done for these terms of Reddy's
21 emails, right? You agree?

22 A. Yes.

23 Q. And let's turn back to Plaintiff's Exhibit 8. Let's turn
24 to the second -- the attachment of this email.

25 **THE COURT:** Say it again.

1 **MR. EISER:** I have an objection, Your Honor. I think
2 the witness may need to leave.

3 **THE COURT:** All right. Please step out.
4 And stop the clock.

5 **THE WITNESS:** Sure.
6 (Witness exits.)

7 **MR. MILLER:** What exhibit is this?

8 **MR. EISER:** Plaintiff's Exhibit 8.

9 **THE COURT:** All right. What's the objection?

10 **MR. EISER:** We had the long discussion about
11 Plaintiff's Exhibit 8. And you instructed Mr. Greenberg, show
12 it to her, see if that refreshes her memory, and if it doesn't,
13 it doesn't come in. Mr. Greenberg came up with his usual thing
14 where he says, "Look over here, doesn't that mean over here?"
15 And what he did was used her email. "And you searched -- you
16 asked for a search using these search terms?" And then,
17 finally, after, "Did they give this to you?"

18 And she said "No."

19 So now he's going back, I guess, saying that little
20 exercise would refresh her memory about here we are with this
21 evaluation again.

22 **MR. GREENBERG:** So I think it would be more
23 appropriate to not refer to counsel by name, it's not
24 necessary. And to not make gestures. And also, not to
25 mischaracterize the witness's testimony.

1 She testified that these search terms were used. That is
2 abundantly clear now. And she also testified that
3 Mr. Annappareddy's email account was the focus because he was
4 the main target.

5 MR. EISER: Are you talking to me?

6 MR. GREENBERG: I'm talking to Judge Anderson.

7 MR. EISER: Why are you looking at me?

8 THE COURT: Both Counsel, direct your remarks to me.

9 Go ahead, Mr. Greenberg.

10 MR. GREENBERG: Yes, Your Honor, I was actually
11 addressing you. I meant to address to you. Maybe I was
12 looking over there. I apologize for that.

13 So, Your Honor, to me, it's clear from the testimony that
14 these search terms were used, and that Mr. Annappareddy is
15 obviously the main target of the investigation. His email
16 account was clearly the focus. It's multiple documents --

17 THE COURT: And you've made that point.

18 MR. GREENBERG: Right.

19 THE COURT: I understand where we are now. So . . .

20 MR. GREENBERG: So the point here is that this search
21 of Mr. Annappareddy's emails would have brought up this
22 document.

23 THE COURT: Right.

24 MR. GREENBERG: And it's a hit, this document.

25 THE COURT: And your point is, since the search terms

1 include the word "bins," and this email had the word "bins,"
2 she should have been aware of it.

3 **MR. GREENBERG:** Well --

4 **THE COURT:** Arguably, should have been aware of it.

5 **MR. GREENBERG:** -- we believe she was aware.

6 **THE COURT:** And you've made that point, so why are we
7 bogging down on this? Are you offering the exhibit into
8 evidence now, or are you going to continue to ask questions
9 about it?

10 **MR. GREENBERG:** Your Honor, respectfully, we would
11 offer into evidence this one. We believe we've laid the
12 appropriate foundation. The word "bins" is a hit. It's a red
13 term on her list. They searched Mr. Annappareddy's emails. He
14 was a focus. Pam Arnold was reviewing them as of July 3rd,
15 2013, focusing on Annappareddy's emails. She testified to
16 that. It's in the email. She said the email is true. And
17 Pam Arnold, she said, would never withhold important
18 information from her.

19 **THE COURT:** All right. Mr. Eiser, what's the
20 objection? You object to the exhibit coming in; is that right?

21 **MR. EISER:** Yes. And --

22 **THE COURT:** And any other further questioning about it
23 as well?

24 **MR. EISER:** The foundation of it. He hasn't even
25 asked the witness whether she reviewed all hundred thousand

1 emails that she got or when she did. He's very carefully
2 avoiding these questions. And that is where we started this.
3 He's trying to get this into evidence through her or to insist
4 that she saw it or to insist that she knew about it. He's
5 asked her. She said, "I don't recall seeing that ever." And
6 it doesn't -- there's nothing done -- he hasn't done anything
7 that refreshed her memory.

8 **THE COURT:** Mr. Greenberg, I said earlier, can't this
9 document come in when the Plaintiff is on the stand? Can't he
10 authenticate it, and it comes in? It will be in record sooner
11 or later.

12 **MR. GREENBERG:** So Your Honor, the Government has
13 stipulated to authenticity. That's on the filed exhibit list.
14 And there's documentation of that.

15 **THE COURT:** Let me turn to the Defendant.
16 Why do you object? It's coming in sooner or later. I'm
17 the fact-finder. I mean, it's coming in, why are we wasting
18 time on this?

19 **MR. EISER:** I agree. This witness apparently never
20 saw it, that's what the testimony is so far. But he keeps
21 trying to hammer her over the head with it. I agree, it's
22 authentic. But there's no foundation to admit it through this
23 witness who never saw it --

24 **THE COURT:** I'm going to sustain the objection at this
25 time to the document coming in, understanding it'll probably

1 come in later. The Plaintiff has made his point that this
2 witness did not see this email and arguably should have because
3 it turned up in the word search. I understand that. I get
4 that. So I think we just need to move on.

5 I'm not going to go admit the exhibit now. I understand
6 it's coming in later. Ms. Lating has been questioned
7 extensively about it, and I think we need to move on to a
8 different subject matter.

9 **MR. EISER:** Thank you, Your Honor.

10 **MR. GREENBERG:** Understood, Your Honor. Thank you.

11 **THE COURT:** All right. Please bring in the witness.

12 (Witness returns.)

13 **THE COURT:** All right. Please continue.

14 **BY MR. GREENBERG:**

15 **Q.** Ms. Lating, both Dennis Tokofsky and Lisa Ridolfi told
16 Laurie Gutberlet that only the, quote, "Middle Eastern" -- a
17 small group of "Middle Eastern" employees at Pharmacare were
18 responsible for automatic refills of Med-4s, right?

19 **A.** I don't recall that being worded that way, no. If you
20 have a report that refreshes my memory of an interview with
21 Lisa Ridolfi --

22 **Q.** Sure.

23 **A.** -- you can show it to me.

24 **Q.** Let's turn to Plaintiff's Exhibit 22. This is a memo --
25 it's already in evidence -- that -- already admitted into

1 evidence. Memo from Laurie Gutberlet dated October 9, 2012,
2 report on her first interview of Lisa Ridolfi.

3 Do you see that?

4 A. Yes.

5 Q. And do you see how there's a chart on Page 8 of this --
6 actually, it's Page 7 of the document, Page 8 of ECF.

7 Do you see that?

8 A. Page 7, yes.

9 Q. And while we're here, let's talk about this chart a little
10 bit.

11 So do you see how -- and this is sort of a flowchart that
12 Lisa Ridolfi, I guess, either prepared or described to
13 Ms. Gutberlet, right?

14 A. Yes.

15 Q. And as far as you knew, during the investigation, the
16 chart was accurate, right?

17 A. As far as I knew, yes.

18 Q. Okay. All right. We can move on from that for the
19 moment.

20 Now, let's turn a little forward. Let's look at Page 13.

21 A. I'm sorry, Exhibit 13?

22 Q. No, no. Same exhibit, Tab 22, the Ridolfi first interview
23 memo.

24 A. Okay.

25 Q. Page 13 of the memo, please, ma'am.

1 A. Okay.

2 Q. Are you with me?

3 A. Yes.

4 Q. Okay. Do you see how there's a bold, italicized heading
5 that says "Pharmacare's Internal Audit"?

6 Do you see that?

7 A. Yes, the top, the heading, yes.

8 Q. And then the first sentence, it says, "Over the Labor Day
9 weekend, Ridolfi learned of a secret internal audit being
10 conducted at Pharmacare." Right?

11 A. That's what it says.

12 Q. And then it goes on to say, I guess five lines down, maybe
13 six lines down, "She was kept in the dark about and only
14 learned of it through her observations and limited
15 conversations with Vipin, Jigar, and several other
16 Middle Eastern employees who were pulled to work on it."
17 Right?

18 A. That's what it says, correct.

19 Q. And then two sentences later, it says, "The audit was
20 being conducted based on Excel spreadsheets with the words
21 'Med-4s' printed on the top of the documents." Right?

22 A. Yes.

23 Q. And Ms. Ridolfi went on to report that she believes these
24 are ". . . printed spreadsheets of the secret documents that
25 Vipin, Jigar" -- and it's spelled Amy, but it's really Ami --

1 ". . . Patel, maintain on their computers." Right?

2 A. Yes.

3 Q. Secret, right?

4 A. That's the word in the report, yes.

5 Q. So your understanding, during the Pharmacare
6 investigation, was that these, quote, "Middle Eastern
7 employees," several of them, they kept these Med-4 Excel
8 spreadsheets secret, right?

9 A. Yes.

10 Q. Now, let's -- now, you remember how Dennis Tokofsky, his
11 reports focus on Med-4s, right? His statements to
12 Laurie Gutberlet and others on the team, right?

13 A. Focused on Med-4s, correct.

14 Q. And the same was true of Lisa Ridolfi, at least initially?

15 A. Lisa -- yes, I would --

16 Q. At least in the first interview.

17 A. -- I would agree with that, yes.

18 Q. Right.

19 And "Med-4" was your number-one search term, or at least
20 at the top of the list that you gave to Google, right?

21 A. Yes.

22 Q. For Mr. Annappareddy's account?

23 A. Yes.

24 Q. All right. Let me show you what's been marked as --

25 **MR. GREENBERG:** And this is stipulated to

1 authenticity, Your Honor, but not yet admitted.

2 **BY MR. GREENBERG:**

3 **Q.** And Ms. Lating, you agree that -- I think you've already
4 testified to this, but let me make sure we're clear.

5 You have agreed that Med-4s were a main focus in the
6 investigation, right?

7 **A.** Yes, I would agree with that.

8 **Q.** So during the Google email review, looking for Med-4
9 references was important?

10 **A.** Yes.

11 **Q.** And so you expected that if Pam Arnold or anybody else
12 found an email referencing Med-4s they'd send it to you?

13 **A.** Yes -- well, to the whole team or discuss it in a meeting.

14 **Q.** Okay. Right. Not just you, but everybody --

15 **A.** Whole team.

16 **Q.** -- or at least the agents on the review?

17 **A.** And the prosecutors.

18 **Q.** Well, I mean, the prosecutors didn't get every email,
19 right?

20 **A.** No. But we would discuss in a team meeting if someone
21 identified an email that they wanted to discuss with the group.

22 **Q.** But as a leader, you were sort of a filter for that,
23 weren't you?

24 **A.** I was a filter? No.

25 **Q.** Well, put it this way, I mean, you and Pam Arnold, you

1 know, were searching -- and/or Pam Arnold searching Reddy's
2 emails, you didn't send the prosecutors every single email that
3 had a search term that came up, did you?

4 A. No, no.

5 Q. All right. So Med-4s, you agree, that was a priority,
6 right?

7 A. Med-4s was a priority.

8 Q. Okay. Let's turn to Plaintiff's Exhibit 7, Tab 7.

9 Let me know when you're there.

10 A. Yes, sir, I'm here.

11 Q. So this is an email from Dennis Tokofsky to, first name is
12 Reddy Annappareddy, right? February 6, 2012.

13 Do you see that?

14 A. Yes.

15 Q. And in the attachments, the word "Med-4" appears, right?

16 A. Yes.

17 Q. And this is one of the documents that came up during the
18 search because Med-4s were prioritized, especially for
19 Mr. Reddy's account?

20 A. I absolutely don't recall the source of this email. I
21 don't recall this email, first off. And --

22 Q. But you agree it was responsive to the search warrant,
23 right?

24 A. I don't know if it's responsive to the search warrant or
25 someone gave it in an interview. I have no recollection of the

1 source of what you're showing me here because I don't recall
2 this email, period.

3 Q. Well, notwithstanding that nearly 10 years later you don't
4 recall the specific email --

5 A. Eleven years, but yes.

6 Q. No, no. The review was in --

7 A. No, but this is 11-year email, in the search warrant in
8 2013, I don't recall anybody saying, "Here's an email,
9 everybody needs to look at it." I don't -- if you could tell
10 me where this came from. I have no idea.

11 Q. I can tell you where it came from. I mean, it's among --
12 it's --

13 MR. EISER: Objection, Your Honor. She has not been
14 refreshed my somebody else's email that she never got.

15 MR. GREENBERG: Well, Your Honor, I think we're going
16 to have the same evidentiary -- not the same, I apologize.
17 This is very different because of the testimony, and I don't
18 want to get into too much in front of the witness, though.

19 THE COURT: Well, once again, this document can easily
20 come in later when Mr. Tokofsky testifies, right?

21 MR. GREENBERG: We don't know if Mr. Tokofsky is
22 testifying.

23 MR. EISER: That's up to them.

24 THE COURT: He's on your witness list.

25 MR. PHELPS: He is, Your Honor. I mean, we are the

1 defense, we don't have to, but we reserve the right to not call
2 anyone.

3 **MR. GREENBERG:** Your Honor, I would ask the witness be
4 excused from all of this. She shouldn't be --

5 **THE COURT:** Hold on just a minute.

6 If it's not challenged on authenticity basis, if the
7 foundation is not challenged, let's let it in, and you can ask
8 her about it. If she doesn't know about it, you need to move
9 on. That's my ruling.

10 **MR. GREENBERG:** Thank you, Your Honor.

11 **THE COURT:** It's in evidence because it's been
12 authenticated by stipulation. Now, you can ask her about it,
13 but if she doesn't know about it, you need to move on.

14 **BY MR. GREENBERG:**

15 **Q.** All right. Ms. Lating, I'll try to get through this
16 quickly.

17 So this is an email from Dennis Tokofsky dated
18 February 6th, 2012, sent to Reddy Annappareddy and several
19 other folks, right?

20 **A.** Yes.

21 **Q.** And one of them is Dan Walker, right?

22 **A.** Dan Walker, correct.

23 **Q.** And he's not of Indian origin, right?

24 **A.** No, he's not.

25 **Q.** And Wayne Dyke is on there, too, right?

1 A. Correct.

2 Q. Not of Indian origin?

3 A. Correct.

4 Q. Dennis Tokofsky is not of Indian origin?

5 A. Correct.

6 Q. Don Hoyt is not of Indian origin, right?

7 A. Correct.

8 Q. They're all white, aren't they?

9 A. Yes.

10 Q. And one of the attachments here, two lines from the bottom
11 says, "Med-4 February 2012, COO," right?

12 A. Yes.

13 Q. And COO is Dennis Tokofsky's title, right?

14 A. Yes.

15 Q. So this is an email that you knew or should have known
16 about during the search, right?

17 A. It's an email I -- I can't say if -- if I identified it
18 during my search of the Google email account. I can't say
19 that.

20 Q. That wasn't my question, but I think we can probably move
21 on, given Your Honor's guidance.

22 All right. Let's turn to another document.

23 You've already established that we've discussed CareMerica
24 at some length, right?

25 A. Yes.

1 Q. And so an email about Med-4s during the time CareMerica
2 was handling Med-4s would be significant, right?

3 A. Yes.

4 Q. All right. Let's turn to Plaintiff's Exhibit 36. This is
5 stipulated to authenticity, but not yet it admitted.

6 And you see how Plaintiff's Exhibit 36 is sent to
7 Reddy Annappareddy?

8 A. Yes, yes.

9 Q. And you see how the subject line, it says "Forward: Med-4
10 list for Plumtree"?

11 A. Yes.

12 Q. And so this is a list that for some reason was being
13 forwarded several -- I guess five or six months after
14 CareMerica opened, right?

15 A. It appears so.

16 Q. And the attachment says "med-4may 13thplumtreeonly.xlsx,"
17 right?

18 A. Yes.

19 Q. And the attachment identifies specific patients. Let's
20 not show it, unless Your Honor wants to, on the screen.

21 MR. GREENBERG: Well, do you want us to? Because it
22 has HIPAA information?

23 THE COURT: It has what?

24 MR. GREENBERG: HIPAA protected information.

25 THE COURT: I can authorize the disclosure of HIPAA

1 information. If the court reporter would seal this part of the
2 transcript, please.

3 Do we have an objection?

4 **MR. EISER:** Again, this witness is not -- this isn't
5 sent to her. She hasn't said whether she saw it. She hasn't
6 said whether she has a memory loss. We're just having --

7 (Cross talk.)

8 **MR. GREENBERG:** I think these kinds of objections, we
9 have to excuse. But also, Your Honor, because of the HIPAA
10 issue, I think, respectfully, it would be appropriate to -- if
11 it's going to be sealed, to not have folks in the courtroom.

12 **THE COURT:** All right. All of the audience, please
13 exit the courtroom at this time, everyone except counsel and
14 their support staff.

15 (Audience exits.)

16 **MR. GREENBERG:** Your Honor, actually, while we're on
17 this topic -- well, I'll get to it later. I don't want to do
18 it in front of the witness. Actually, could we stop the clock
19 during this?

20 **THE COURT:** All right.

21 Stop the clock.

22 **MR. GREENBERG:** Thank you, Your Honor.

23 **BY MR. GREENBERG:**

24 **Q.** So Ms. Lating, we've established that --

25 **THE COURT:** All right. Start the clock.

1 **MR. GREENBERG:** Oh, sorry.

2 **BY MR. GREENBERG:**

3 **Q.** Ms. Lating, we've established that Lisa Ridolfi reported,
4 and you understood during the investigation, that these Med-4
5 trackers or calendars were secret documents, right? Remember,
6 in our first interview?

7 **A.** Yeah.

8 **Q.** We just talked about it like five minutes ago --

9 **A.** Yes, yes.

10 **Q.** All right. So here, see who the original email is then
11 sent to?

12 **MR. GREENBERG:** Scroll up a little but please, of the
13 original -- earliest in time.

14 **BY MR. GREENBERG:**

15 **Q.** From Vipin Patel, right, "vipin@pharmacare.us"?

16 **A.** Yes.

17 **Q.** Who is the first name in the "To:" line?

18 **A.** Lisa Ridolfi.

19 **Q.** Lisa Ridolfi. "Lisa@pharmacare.us," right?

20 **A.** Yes.

21 **Q.** And that email account is also in the Google search
22 warrant affidavit, right?

23 **A.** Yes.

24 **Q.** And it says, "From: Vipin Patel. Please find Med-4 list
25 for Plumtree into the attachment document." Right?

1 A. Yes.

2 Q. And then it says, "And please send refill request in
3 advance." Right?

4 A. Yes, it does.

5 Q. And that's referring to automatic refills, right?

6 A. I -- I don't know if that's referring to automatic
7 refills. It just says "refill request."

8 Q. Okay. But Lisa Ridolfi described Excel files that tracked
9 automatic refills for Med-4 patients, right?

10 A. Yes.

11 Q. And she said they were secret.

12 A. In her interview, yes, she referred to --

13 Q. Yes --

14 A. -- as secret.

15 Q. We've covered that, so let's just move on to the actual
16 documents. We can show His Honor an example what this looks
17 like. This secret -- supposedly secret document.

18 So the supposedly secret at the very top, it says, in the
19 center -- what does it say in all red, partially all caps
20 letters?

21 A. "All Med-4 patient."

22 Q. Okay. So Ms. Ridolfi got the secret Med-4 document here
23 that has, in column G, the number of refills left, right?

24 A. I'm not sure I'm comfortable referring to this document
25 here as secret, is what she's referring to as secret when she

1 was interviewed by Laurie Gutberlet. I don't recall this
2 email, so I can't say this is the secret document --

3 Q. Okay.

4 A. -- referred to in the interview or not.

5 Q. That's a very good point, Ms. Lating. Because Ms. Ridolfi
6 got this email, it really wasn't a secret, right?

7 A. This document right here is not -- it appears it wasn't a
8 secret because she was copied on it, correct. I would agree
9 with that, yes.

10 Q. And do you see how it has, in columns E and F, months in
11 2013 and days?

12 A. Yes.

13 Q. And then I think we've already covered, it has numbers of
14 refills left in column G.

15 A. Yes.

16 Q. And then it has specific patients' names, right?

17 A. Yes.

18 Q. And you see in row 4 it says C.G.?

19 A. Yes.

20 Q. That's one of the patients that Ms. Ridolfi reported to
21 Ms. Gutberlet in a later interview as being supposedly the
22 subject of fraud, right?

23 A. A victim of fraud.

24 Q. Supposedly.

25 A. Of -- of -- yeah.

1 Q. And then here's Ms. Ridolfi getting an automatic refill
2 tracker for C.G., right?

3 A. A refill -- you referred to it as "auto refill." I would
4 just say, what I'm looking at here, it says she's got one
5 refill left, correct. I would agree with that.

6 Q. Okay. But if you scroll down to, for example, line 23,
7 that patient has 4 refills left, right?

8 A. Yes.

9 Q. And if you scroll down to line 27, for example, that
10 patient, who it says "Plumtree" -- that's where Lisa Ridolfi
11 worked, right?

12 A. Yes.

13 Q. Had five refills left.

14 A. Yes.

15 MR. GREENBERG: Okay. I think we've made the point
16 and we can unseal --

17 (Cross talk.)

18 THE COURT: All right. Let me ask, although exhibit
19 lists patient names and medicines, there was nothing put on the
20 record in the transcript. So is there any need for the court
21 reporter to seal that part of the transcript, or should we just
22 file this document under seal? I'm just asking.

23 MR. GREENBERG: Your Honor, I did mention one
24 patient's name. We would be fine with just redacting and
25 having her initials.

1 **THE COURT:** Let's just redact that one patient's name,
2 if the court reporter could do that. Just let the court
3 reporter know what's in and what's out.

4 **MR. GREENBERG:** Sure.

5 **THE COURT:** What's the exhibit number here?

6 **MR. GREENBERG:** It's already in. Actually, I don't
7 know if I moved it in. I would move, respectfully, that
8 Plaintiff's Exhibit 36 been admitted.

9 **THE COURT:** Any objection?

10 **MR. EISER:** Yes. Based on what?

11 **THE COURT:** Well, there's no question about its
12 foundation. It's stipulated.

13 **MR. GREENBERG:** Can we excuse the witness, if this is
14 going to go on?

15 **THE COURT:** What?

16 **MR. GREENBERG:** I'm just concerned with these
17 objections telegraphing messages to the witness.

18 **THE COURT:** All right. Please step outside a moment.

19 **THE WITNESS:** Yes, Your Honor.

20 (Witness exits.)

21 **THE COURT:** I don't know the basis for the objection
22 exactly.

23 **MR. EISER:** Your Honor, we don't, again, object to the
24 authenticity. We accept that this came from their computer.
25 But documents have to be entered into evidence through a

1 witness --

2 **THE COURT:** Well, not if the authenticity is not
3 questioned. Now, whether it's relevant or not, if it turns out
4 not to be relevant, I don't have to consider it. I'm the fact
5 finder. I can regulate that much better than I can with a
6 jury.

7 **MR. EISER:** Okay.

8 **THE COURT:** But, to me, if this is something that,
9 arguably, this witness should have read and should have known
10 about, and she says on the stand that she didn't know about it,
11 it makes it relevant. Now, how much weight it deserves, who
12 knows, we'll find out later.

13 But I think the fact that the authenticity or the
14 identification is not challenged, it comes in. If the witness
15 says she didn't see it, didn't know about it, it's relevant for
16 that purpose, at least. So I would overrule the objection on
17 that basis. Now, understanding that when all of the evidence
18 is in, and we argue the case, we can fine-tune this to some
19 disagree.

20 **MR. EISER:** Thank you.

21 **THE COURT:** And understand, even if I sustain your
22 objection, I have to let the Plaintiff make an offer of proof
23 for appeal purposes. So it's going to come into the record,
24 and I've already seen it, so I think we can deal with this
25 better later on.

1 **MR. EISER:** Thank you, Your Honor.

2 **THE COURT:** All right. Please bring the witness back.

3 (Witness returns.)

4 **THE COURT:** And let me just say, regarding HIPAA, I
5 find that the need for this information in this case is
6 compelling, sufficient to override the privacy interest
7 provided for in the HIPAA law. That's my reason for allowing
8 this in. But it will be under seal.

9 **MR. GREENBERG:** I understand, Your Honor. And just
10 for guidance going forward, should we go through this process
11 for other HIPAA information? Or do you --

12 **THE COURT:** Do you have for exhibits like this?

13 **MR. GREENBERG:** We do.

14 **THE COURT:** All right. Well, if you think it's
15 governed by HIPAA, just tell me, and we'll file it under seal.

16 **MR. GREENBERG:** All right. Well, I really mean this
17 clearing the courtroom, you know. Maybe there's a way we can
18 talk about --

19 **THE COURT:** Is the audience able to see what's on the
20 screen? Is there any way to delete the public monitor or black
21 it out?

22 **THE CLERK:** Your Honor, I can black out the public
23 monitors. The problem is, is the monitor is on counsel table.
24 If they're sitting in the gallery and can see it, they can
25 still see it from --

1 **THE COURT:** They can still see it on counsel table.

2 **THE CLERK:** Yes.

3 **THE COURT:** We can excuse the audience each time, if
4 you want to. Can we just not ask the audience members to look
5 the other way, and not look at the screen and trust them -- I
6 want to comply with HIPAA, but I just hate to extend -- you
7 know, run up our time.

8 **MR. GREENBERG:** I understand, Your Honor. You know,
9 look, if Your Honor has authority to -- I think you said
10 yesterday Your Honor has authority to override it.

11 **THE COURT:** I've overwritten it in discovery disputes,
12 I know. And the law provides for a judicial override. Let's
13 do some research on it over lunch, how about that?

14 **MR. GREENBERG:** Another way to possibly address this.

15 **THE COURT:** What about redacting the names of the
16 patients. Are the names important?

17 **MR. GREENBERG:** That's an option, as well. Yeah. We
18 can -- if this is going to be -- I think it might be a
19 repeating issue, we can redact. We can do that.

20 **THE COURT:** Let's plan on over lunch, getting your
21 technicians to delete the names, if possible. Names and Social
22 Security numbers, if they're in there.

23 **MR. GREENBERG:** Okay. Thank you, Your Honor.

24 **THE COURT:** Do we have any audience members that need
25 to come back?

1 (Audience returns.)

2 **THE COURT:** Start the clock.

3 Please continue.

4 **BY MR. GREENBERG:**

5 **Q.** All right. Ms. Lating, so we've established that
6 Lisa Ridolfi, on at least one occasion, got Med-4s calendars,
7 right?

8 **A.** Yes.

9 **Q.** Why don't we move on from this exhibit, for the moment, at
10 least.

11 And why don't we talk about, just briefly, these
12 references to, quote, "Middle Eastern" people that were in many
13 of the interview reports, you noticed that when you read them,
14 right?

15 **A.** Yes. There was references to that, yes.

16 **Q.** My question, you noticed those references, right?

17 **A.** Yes.

18 **Q.** They stood out to you?

19 **A.** No. I noticed the names being referenced were
20 Middle Eastern names, but it's just a way of describing people
21 involved in this case.

22 **Q.** Okay. And that's because it was kind of a shorthand for
23 saying not from the United States?

24 **A.** No. It's just a way to describe where someone originated
25 from.

1 Q. Okay. So your understanding, during the Pharmacare
2 investigation, was that these folks involved in the alleged
3 fraud were from the Middle East?

4 A. I could tell by their names, they appeared to be
5 Middle Eastern names.

6 Q. The answer is "yes"?

7 A. Yes, absolutely.

8 Q. All right. Let's move on to another topic.

9 Why don't we turn to Government's Exhibit 22. I think we
10 can probably get through that fairly quickly. That's in the
11 other binder, ma'am.

12 Let me know when you're there.

13 A. I'm there, sure.

14 Q. We previously talk about the undercover operations at
15 Plumtree, Mt. Clare, and Park Heights, right?

16 A. Yes.

17 Q. And you see this document, Government's Exhibit 22, the
18 earliest email is from someone named Michael DiPietro?

19 A. Yeah. He was a federal prosecutor.

20 Q. Well, not really a prosecutor, because he was civil AUSA,
21 right?

22 A. He's still an AUSA.

23 Q. But he didn't actually prosecute anybody. He did civil
24 cases, right?

25 A. He did civil prosecutions, but, okay.

1 Q. Well, you understand, as an experienced agent that did a
2 lot of healthcare investigations, that an AUSA who works on
3 *qui tams* is not prosecuting anyone just by virtue of working on
4 *qui tams*, right?

5 A. He didn't just work on *qui tams*.

6 Q. That's not my question.

7 A. Okay. Yes. I -- I agree.

8 Q. All right. So Michael DiPietro sent this email March 4,
9 2013, 12:22 p.m., right?

10 A. Yes.

11 Q. And it's sent to Laurie Gutberlet, among others, right?

12 A. Yes.

13 Q. And this would be, you know, because Laurie Gutberlet told
14 you about all of the significant emails, she would tell you
15 about one that related to the undercover operations, right?

16 A. I don't recall --

17 Q. Okay.

18 A. -- getting this email.

19 Q. Well, let's see if we can refresh your recollection.

20 Mr. Michael DiPietro -- then civil AUSA DiPietro said,
21 quote, "Can you tell me if Pharmacare has refilled all four
22 scripts that are 2UC submitted, question mark, question mark."

23 Do you see that?

24 A. Yes.

25 Q. "I recall that refills are available for all four scripts

1 by now."

2 A. Yes.

3 Q. And that is referring to the undercover operations of
4 those three stores, right? Pharmacare, Mt. Clare,
5 Park Heights.

6 A. Yes.

7 Q. And Ms. Gutberlet responds -- and this is, you know, about
8 a month before she's leaving, right?

9 A. Yes.

10 Q. Kind of she's on her way out the door?

11 A. Yes.

12 Q. And she only mentions that prescription refill activities
13 occurred twice now for both fictitious Medicaid recipients, and
14 she says when they were billed, but she doesn't specify it was
15 only at Plumtree, right?

16 A. In this email, she doesn't, no.

17 Q. So it creates the impression it was all three stores,
18 right?

19 A. Once again, I didn't get this email. I don't know what
20 she was implying in this email to all that received it, because
21 I didn't receive it so --

22 Q. All right.

23 A. -- I have no idea.

24 Q. Fair to say the email speaks for itself?

25 A. Well, I know that the undercovers went to three locations,

1 so I don't know -- she didn't say in here which location.

2 Q. Okay. And -- all right. We can move on from this one.

3 A. Okay.

4 MR. GREENBERG: Your Honor, this might be a good time
5 for lunch break, if Your Honor is amenable.

6 THE COURT: It makes for such a long afternoon.
7 Unless there's real strategic reason, I'd like to move forward
8 for at least another half an hour.

9 MR. GREENBERG: Okay. Understood.

10 THE COURT: It's good if we can break the day
11 approximately in half and break the morning and afternoon
12 approximately in half. It just cuts down on the fatigue of
13 everybody. I'd rather move forward.

14 MR. GREENBERG: Understood. Will do. All right.

15 BY MR. GREENBERG:

16 Q. Ms. Lating, I don't know if I need to show you a document
17 for this. At this point it's pretty significant. At least as
18 of the fall of 2012 or as of, say, August of 2012, in that
19 general time frame, the Plumtree pharmacy was filling about,
20 say, 500 or 600 prescriptions a day, right?

21 A. I remember a report where it said it was about 450
22 prescriptions a day, I think. A Lisa Ridolfi report.

23 Q. Lisa Ridolfi said 450 and maybe --

24 A. That's my recollection.

25 Q. -- and Mary Sue Cramer said, like, 400 or 600 a day?

1 A. I don't recall the Mary Sue Cramer. I remember reading
2 about Lisa Ridolfi saying 450 prescriptions a day.

3 Q. Okay. So 450 prescriptions a day, multiplied by seven,
4 that's over 3,000 a week, right?

5 A. Yes, roughly.

6 Q. And if you multiply that times 365, that's, gosh, about a
7 million prescriptions a year?

8 A. A little under a million, 900 and something. Yeah, close
9 to a million.

10 Q. About a million prescriptions.

11 A. Yes, sir.

12 Q. And so -- all right. And that's just from the Plumtree
13 store, right?

14 A. Yes.

15 Q. That doesn't even count all of the other Pharmacare
16 stores?

17 A. Correct.

18 Q. Why don't we turn to -- let's turn to Plaintiff's
19 Exhibit 31, which is already in evidence.

20 A. Thirty-one?

21 Q. Yes, ma'am.

22 A. Okay.

23 Q. So Plaintiff's Exhibit 31 is an email from you,
24 Ms. Lating, April 16th, 2013, to Robert Mosley and
25 Cathy Pascale, right?

1 A. Yes.

2 Q. Copied Arnold and Jim Hagin?

3 A. Yes.

4 Q. And the attachment says, "Lating Accepted Revisions to
5 Google Affidavit," right?

6 A. Yes.

7 Q. And this is the Google affidavit we talked about earlier
8 that was sort of the starting part for the final Lating
9 affidavit?

10 A. Yes.

11 Q. All right. Now, it says -- you're telling Cathy Pascale
12 in the first paragraph -- I guess the last sentence,
13 "Robert" -- meaning Mosley -- "is looking into Medicare
14 regs" -- all caps -- "because I think there is a CMS regulation
15 concerning when claims should be reversed for unclaimed billed
16 drugs." Right?

17 A. Yes.

18 Q. Okay. So that's that part.

19 And your understanding was that -- Ms. Lating, CMS is
20 Center for Medicaid and Medicare Services, right?

21 A. Yes.

22 Q. So that's federal government healthcare programs, right?

23 A. Yes.

24 Q. So the idea here is that you wanted to find out whether
25 there was actually a regulation requiring this 14-day reversal

1 thing, right?

2 A. Yes.

3 Q. So if you turn to -- maybe the ECF heading is easier to
4 follow. Page 18 of 34 in the ECF heading.

5 A. Yes.

6 Q. Do you see there's a comment there?

7 A. Yes.

8 Q. And it looks like CPS, CP5, maybe, that's probably Cathy
9 Pascale?

10 A. Yes.

11 Q. And she said, "Don't know if this is a regulation, just
12 good practice." And then all caps, "Mosley's researching, I
13 think Medicare has this as a regulation." Right?

14 A. Yes.

15 Q. And you wrote all caps responding to Pascale's comment,
16 right?

17 A. Where's my comment?

18 Q. Well, so you know how in -- I guess review or track
19 changes or whatever it's called, you can respond to a comment
20 or you can edit a comment?

21 A. Yes.

22 Q. So this message here in all caps tracks your email, right,
23 about Mosley looking into this?

24 A. That would be me putting in caps Mosley is looking into
25 this regulation. It's leaving a marker there, it's a reminder

1 to me that we still need to fill that in.

2 **THE COURT:** I'm having trouble following what your
3 talking about in all caps.

4 **MR. GREENBERG:** Okay. I'm sorry.
5 Can we blow that up, actually.

6 **THE COURT:** I'm good now, yes.

7 **BY MR. GREENBERG:**

8 **Q.** Maybe the easier way to do this is just look in the big
9 all caps font in the actual text that you wrote there,
10 Ms. Lating. Because you had been the last one to edit this,
11 right?

12 **A.** I'm the last one?

13 **Q.** Well, it says on the attachment "Lating Accepted Edits,"
14 or something like that, on the first page. "Lating Accepted
15 Revisions to Google Affidavit."

16 **A.** Okay.

17 **Q.** All right. So you wrote on Page 17 of the document,
18 Page 18 ECF, you wrote in really big all caps letters, "Mosley
19 looking into this regulation." Right?

20 **A.** Right.

21 **Q.** And that tracks your email, right?

22 **A.** And then I had the questions, right, in the body of the
23 email, correct.

24 **Q.** Right.

25 All right. So also in this document -- we can come back

1 to this later. We don't have to talk about this for now. We
2 can put that one aside.

3 The reality, Ms. Lating, is that there was no federal or
4 Maryland law or regulation prior to 2014 that imposed the
5 14-day reversal window, right?

6 A. It was an industry standard.

7 Q. My question, Ms. Lating, is that the reality is that prior
8 to 2014, there was no federal or Maryland law or regulation
9 imposing a 14-day reversal window, correct?

10 A. Correct.

11 Q. Okay. Ms. Lating, you understood early in your role in
12 the Pharmacare investigation that the logs Pharmacare used to
13 track receipt of prescriptions were important documents, right?

14 A. Signature logs, correct.

15 Q. And there -- had different types of logs. It was delivery
16 signature logs, signature logs, and client logs?

17 A. Yes.

18 Q. And you understood those were -- I think as you might have
19 put it once -- the heart of the case, right?

20 A. Were they delivered or not; that's the question in this
21 case.

22 Q. Right.

23 And so those logs were critically important documents,
24 right?

25 A. Yes.

1 Q. And you, Ms. Lating, you knew from the memo -- at least
2 the first memo in the Lisa Ridolfi interview, and at least one
3 other memo, I think Nikkia Dansbury in August of 2012 by Laurie
4 Gutberlet, you knew those logs that were critically important
5 evidence were at Plumtree, right?

6 A. And other locations, too.

7 Q. Right.

8 And you had a confidential source at Plumtree, Lisa
9 Ridolfi, right?

10 A. Medicaid had a source, yes.

11 Q. Well, I mean, you were working with them, right?

12 A. Yes. We were working together.

13 Q. And so Ms. Ridolfi gave a lot of documents and photos to
14 Laurie Gutberlet and then, later, Pam Arnold, right?

15 A. Yes.

16 Q. And she never gave one of those logs, did she?

17 A. She never gave one of those log -- like a page from a log?
18 Can you rephrase the question because I'm not sure what you're
19 implying.

20 Q. Sure.

21 To the best of your knowledge, Ms. Lating, at no time did
22 Lisa Ridolfi give one of those logs at Plumtree a copy or
23 otherwise anyone in the investigation, did she?

24 A. For what reason?

25 Q. That's not my question --

1 A. I have no recollection --

2 THE COURT: Mr. Greenberg, you need to stay in front
3 of a mic so the court reporter can get a good feed.

4 MR. GREENBERG: My apologies, Your Honor.

5 BY MR. GREENBERG:

6 Q. Ms. Lating, do you need me to restate the question?

7 A. No, I have no recollection of seeing photos or copies of
8 delivery log sheets produced by Lisa Ridolfi.

9 Q. And, as far as you know, Ms. Lating, Special Agent Robert
10 Mosley never asked Lisa Ridolfi or anyone else to provide
11 copies of those logs, did he?

12 A. I have no recollection of that.

13 Q. And you, Maura Lating, you never asked Lisa Ridolfi to
14 provide copies of any of those logs, did you?

15 A. I'm not sure why I would, but yes, I have no recollection
16 of ever asking Lisa Ridolfi or Pam Arnold or Robert Mosley to
17 see a page from a signature log or a delivery logbook, no. I
18 don't recall.

19 Q. And you have no recollection because you never did it,
20 right?

21 A. Correct.

22 Q. As far as you know, Pam Arnold never did either, right?

23 A. I have no knowledge of that.

24 Q. So the answer is "correct"?

25 A. I have no knowledge that she ever asked Lisa Ridolfi for

1 delivery log sheets or signature log sheets.

2 Q. And the "she" is Pam Arnold?

3 A. I mean Pam Arnold, yeah.

4 Q. So the answer is, "Correct, Pam Arnold never asked" --

5 A. I have no recollection of being aware that Pam Arnold
6 asked Lisa Ridolfi for any delivery log sheets.

7 Q. Okay. And similarly, neither you, Special Agent Mosley,
8 nor Pam Arnold asked any other person who had access to
9 Pharmacare documents for any of those logs, ever, before the
10 Lating affidavit was presented, right?

11 A. Correct. I don't recall that.

12 Q. And you don't recall it because it never happened, right?

13 A. As I sit here today, 10 years later, I don't recall ever
14 asking anybody to either get it from someone they're going to
15 interview or seeing it in 2012 reports by Medicaid, correct.

16 Q. And you know, Ms. Lating, that we don't have access to
17 those logs in 2011 anymore, right?

18 A. I don't know. I -- there may be some logs that we don't
19 have anymore in evidence, but we had logs from possibly other
20 locations for 2011. I have no -- I have no idea.

21 Q. Do you remember the date, March 11, 2015?

22 A. I -- I -- yes, sir, I do remember that date. And what I'm
23 saying is, I don't know, in evidence right now, at the FBI
24 office, whether there's any logs for the year 2011 from any of
25 the six searched sites. I have no -- no knowledge of that.

1 Q. So my question was a little broader, actually.

2 A. Okay.

3 Q. As far as you know, because of the document destruction
4 ordered by the government and executed by the government in
5 March 11, 2015, there's no more logs from 2011, right?

6 A. You need to rephrase that question. I resent the fact
7 that you're -- the way you worded it. "The government ordered
8 the evidence to be destroyed."

9 Q. You resent it because Sandra Wilkinson ordered it?

10 A. I'm not sure "ordered" is the right term for it.

11 Q. Well, you know there's a memo on it, right?

12 A. Right. But you're using the word "ordered," and I don't
13 think that's an appropriate term for what happened that day, on
14 March 11th.

15 Q. So, all right. I don't want to quibble about the word,
16 but I think it's in the memo. We can move on from that.

17 You agree that then Assistant AUSA Wilkinson made the
18 decision to have those documents destroyed?

19 MR. EISER: Objection.

20 THE COURT: On what basis?

21 MR. EISER: He has -- it's vague. There's been --

22 MR. GREENBERG: I'll clarify.

23 BY MR. GREENBERG:

24 Q. So, Ms. Lating, I think I understand what you said you
25 resent.

1 And Sandra Wilkinson, who was then the head of the major
2 crime section in the U.S. Attorney's Office in Baltimore, she
3 decided to have those logs from 2011 and 2012 destroyed, right?

4 **MR. EISER:** Objection. We have not established what
5 was destroyed, what was in those boxes through any witness.

6 **THE COURT:** I would overrule the objection. You can
7 explore that on cross-examination or through other witnesses
8 exactly what was destroyed.

9 Go ahead.

10 Overruled.

11 **THE WITNESS:** Can you ask the question again, sir.

12 **BY MR. GREENBERG:**

13 **Q.** All right. Well, you said you resented me using the
14 government, and I mentioned Sandra Wilkinson. Let me just sort
15 of -- without getting into who did what.

16 The government had custody of those 2011, 2012 logs, as of
17 March 11, 2015, right?

18 **A.** Yes.

19 **Q.** And on that date, a senior prosecutor, Sandra Wilkinson,
20 acting on behalf of the United States Government, ordered the
21 2011, 2012 logs destroyed, right?

22 **A.** I don't like the way you phrased it. "Acting on behalf of
23 the U.S. Government."

24 **Q.** Well --

25 **A.** Sandra Wilkinson, yes.

1 Q. You are aware that Sandra Wilkinson was employed by the
2 U.S. Government, right?

3 A. Yes.

4 Q. And she was acting in the course of her employment, right?

5 A. You're putting me under that umbrella when you say "on
6 behalf of the U.S. Government."

7 Q. I'm not putting -- no. I'm asking about Sandra Wilkinson.

8 A. Okay. Okay. Yes. Yes. Sandra Wilkinson, yes.

9 Q. Sandra Wilkinson, a section head in U.S. Attorney's Office
10 in Baltimore, had those logs from 2011, 2012 destroyed in
11 March, 2011, '12, right? 2015, sorry.

12 A. I can't say. There were logs -- yes, there were logs that
13 were destroyed, correct. Absolutely.

14 Q. And you don't know whether a single one of them still
15 exists, do you?

16 (Reporter clarification.)

17 **BY MR. GREENBERG:**

18 Q. You don't know whether a single one of those logs tracking
19 receipts of medications for 2011, 2012, still exist, do you?

20 A. In some other -- you mean -- I don't understand what you
21 mean.

22 Q. Okay.

23 A. They don't exist in --

24 **THE COURT:** I understand this was a big deal for your
25 side of the case, but does this really help us on the question

1 of probable cause for the warrant?

2 **MR. GREENBERG:** It -- well, I don't know if I should
3 answer that in front of the witness, Your Honor. But, if I
4 may, yes. And the reason is because, as we explained in our
5 motion *in limine* on this topic and our reply, it goes to
6 knowledge and opportunity and, you know, awareness of these
7 documents, not requesting them from Lisa Ridolfi or anybody
8 else --

9 **THE COURT:** I'm okay with that. I'm with you there.

10 But ya'll are quibbling over the word "ordered." We know
11 they were destroyed because judge Russell ruled they were
12 destroyed and dismissed the case. So that's that.

13 **BY MR. GREENBERG:**

14 **Q.** All right. Ms. Lating, do you agree with that?

15 **A.** Yes.

16 **MR. GREENBERG:** I think now is a good time to break
17 for lunch if Your Honor is okay with that.

18 **THE COURT:** All right. We'll go ahead and break for
19 lunch. Let's just say it's 12:30, let's break until 1:40.
20 We'll pick back up at 1:40.

21 Before we leave, let me speak to the members of the
22 audience.

23 If I can have the attention to the audience members. We
24 have a federal law, the acronym is HIPAA, that protects the
25 privacy rights of patients through their medical records and

1 their Social Security numbers and so forth, and I have the
2 authority to override that law if needed in a court proceeding.
3 So we've had a couple of exhibits that have been on the screen
4 that display some patient names, and we've asked to you leave
5 the courtroom. That slows down this trial process for all of
6 us. It would help if we could get all of you to agree to just
7 avert your eyes when this document goes on the screen and not
8 look at the patient names so that we can respect the HIPAA law.
9 So I would like to request that. You consider it over lunch.
10 We're going to research it over lunch to see if I have the
11 authority to do that. But just be aware of that, and we're
12 going to go back into that when we resume at 1:40.

13 All right. We'll be in recess.

14 **THE CLERK:** All rise. This Honorable Court is now in
15 recess.

16 (Whereupon, a recess was taken from 12:28 PM to 1:43 PM.)

17 **THE COURT:** Please be seated.

18 On the HIPAA information regulations, we researched it
19 over lunch. The law doesn't give much guidance. I have the
20 authority as a judicial officer to order material produced that
21 is subject to HIPAA. And I will do so in this case because it
22 is important to the trial, the issues here. We've been talking
23 about sealing the transcript, but the more important thing is
24 to seal the document or, even better, redact the identifying
25 information. Is that doable from this point forward?

1 **MR. GREENBERG:** Yes, Your Honor.

2 **THE COURT:** You can put up an exhibit with the names
3 and Social Security numbers redacted?

4 **MR. GREENBERG:** Yes, Your Honor.

5 **THE COURT:** All right. If that's the case, there's no
6 need to clear the courtroom, right?

7 **MR. GREENBERG:** Oh, actually, there is physical
8 evidence, these trash items, that we can't alter because --

9 **THE COURT:** Right. Well, when you come to that, we'll
10 deal with it. But I clearly have the authority to override
11 HIPAA in the interest of justice in trying this case, and I
12 will do so for any information that is relevant to the issues
13 being tried here today.

14 When we get to the other items that you just described --
15 are you going to put them on a screen somehow that the audience
16 can see?

17 **MR. GREENBERG:** The trash, Your Honor?

18 **THE COURT:** Yes.

19 **MR. GREENBERG:** No, those are going to be items I'm
20 going to hand to the witness, they're physical.

21 **THE COURT:** Well, then we don't have to worry about
22 clearing the courtroom because the audience won't see
23 identifying information.

24 **MR. GREENBERG:** I guess that's right.

25 **THE COURT:** All right. Very good. Let's move

1 forward.

2 **MR. FLOWERS:** Just one housekeeping matter, Your
3 Honor.

4 **THE COURT:** Yes, sir.

5 **MR. FLOWERS:** At 5:00, I have a scheduling conference
6 in front of Chief Judge Bredar, the chief judge of this
7 courthouse, in a criminal case. We thought -- when it was
8 originally scheduled, I told him I was in trial with Your
9 Honor, and Judge Bredar thought by 5:00 I would be out. It's
10 just a teleconference, so if I could just step out for a couple
11 of minutes.

12 **THE COURT:** Let's do that. If you don't mind, I'd
13 like to go to 5:30, but I certainly would excuse you to go do
14 that telephone call.

15 **MR. FLOWERS:** Thank you, Your Honor.

16 **THE COURT:** No problem whatsoever.

17 Please bring in the witness.

18 (Witness enters.)

19 **BY MR. GREENBERG:**

20 **Q.** Ms. Lating, do you recall that in one of your affidavit
21 drafts, at least one draft, you had a note to include five
22 customer complaints, maybe at least five customer complaints?

23 **A.** I don't recall that specifically, but if you have
24 something to refresh my memory. I had a lot of drafts.

25 **Q.** Let me see if I can refresh your recollection by using

1 initials. Do you remember writing RE customer complaints,
2 quote, "maybe five good examples," in parentheses, and I'll use
3 initials, K.B., D.S., N.J., G.F., G.S. and T.P. Do you
4 remember that?

5 A. No, I don't recall that.

6 Q. The final Lating affidavit that you presented to
7 magistrate judge on July 23rd, 2013, only has one customer
8 complaint, right? Do you need to look at the affidavit?

9 A. Yes, if I could. The final affidavit.

10 Q. All right. Tab 70.

11 Ms. Lating, before I ask you about this, let me ask a few
12 questions on 302; is that okay.

13 A. Yes.

14 Q. You, I think, testified yesterday that as an FBI special
15 agent, you prepared thousand of 302s, right?

16 A. In my whole career, more than a thousand.

17 Q. All right. And there's an FBI rule or policy for the
18 number of days within which after an interview, a 302, has to
19 be prepared, right?

20 A. Yes.

21 Q. I think it's called a 21-day rule?

22 A. I've never heard it referred to that.

23 Q. Okay. What have you heard it referred to as?

24 A. I always try to get my 302s done within five days.

25 Q. Okay. That's good.

1 What's the actual FBI policy, though? Or what was it when
2 you were a special agent, specially in 2013?

3 A. I think it was less than 30 days. I don't recall the
4 exact.

5 Q. Less than 30 days.

6 A. Yes.

7 Q. So it would be contrary to FBI policy to rely on an
8 interview report that was prepared, like, over five months
9 after the interview, right?

10 A. I don't recall doing that. If you have something that
11 shows that I did do that.

12 Q. That's not my question, Ms. Lating.

13 I'm asking you simply whether it would be contrary to FBI
14 policy to rely on an interview report that was prepared more
15 than five months after the interview?

16 A. I'm referring to my notes when I type it up, so I don't --

17 Q. I'm talking as a general matter, as of 2013, the spring,
18 let's say --

19 A. Right.

20 Q. -- was it -- it was contrary to FBI policy to rely on an
21 interview report that was prepared more than five months after
22 the interview, right?

23 A. I would still rely on it.

24 Q. Despite the FBI policy?

25 A. Absolutely.

1 Q. Do you believe it is -- do you agree that it is not a good
2 investigative practice for an agent to prepare an interview
3 report more than five months after an interview, right?

4 A. And if there's an example of me doing that, I would like
5 you to show that to me.

6 Q. Please stick to my question.

7 A. Okay.

8 Q. You agree, it is not a good investigative practice, and
9 it's not reliable, to prepare an interview report more than
10 five months after an interview, right?

11 A. It isn't, no. No.

12 Q. Let's look at Government's Exhibit 29. So this is a
13 report by Ms. Gutberlet, Laurie Gutberlet, dated April 9, 2013,
14 right?

15 A. Sorry. Wrong book. Exhibit 29 was an email.

16 Q. It's in the Government's binder.

17 A. Okay. Sorry. Okay. Yes.

18 Q. And you see -- so we agree it's dated April 9, 2013.

19 A. Yes.

20 Q. And you see under "Interview," it says the interview was
21 on October -- actually, let me turn the next page, that's the
22 actual interview date.

23 Top of the second page, you see the first full paragraph,
24 it says, October 22nd, 2012, for the date of the interview?

25 A. Yes.

1 Q. And this is Richard Hiller, a pharmacist at Hillendale
2 pharmacy?

3 A. Yes.

4 Q. Referenced in your final Lating affidavit, it says R.H.

5 A. Yes.

6 Q. And this interview report was prepared more than
7 five months after the interview, right?

8 A. Yes.

9 Q. Okay. We can put that one aside, please. Let's go back
10 to Plaintiff's Exhibit 70.

11 By the way, you didn't mention in the affidavit that
12 Richard Hiller had applied for a job at Pharmacare and had not
13 gotten the job, did you?

14 A. I didn't know that.

15 Q. You didn't know that?

16 A. I did not know that.

17 Q. So if we look on Page 22 of Exhibit 70, if you look at the
18 ECF header, it's Page 27 under "Customer Complaints."

19 A. Yes.

20 Q. And customer complaints has an "S" on the end, like
21 plural, right?

22 A. Yes.

23 Q. But there's actually only one customer referenced, right?

24 A. For Pharmacare.

25 Q. Right.

1 And so this Paragraph 41, it says "Customer." T.P. is the
2 only customer mentioned here, right?

3 A. Yes.

4 Q. And you, I think, have already agreed -- or let me just
5 ask you again to make sure it's in the record.

6 You agree that T.P. was not taking any Med-4 medication,
7 right?

8 A. That's correct.

9 Q. Not prescribed any such medication?

10 A. That's correct.

11 Q. And the total amount that the affidavit says was paid to
12 Pharmacare for the purportedly improperly billed refills for
13 T.P., the total amount \$1,961.64, right?

14 A. Correct.

15 Q. Now, you then have, on the next page, "Complaints from
16 Other Pharmacies" in plural, right?

17 A. Yes.

18 Q. But there's actually only one pharmacy, right?

19 A. Yes.

20 Q. And that's that pharmacist from Hillendale, where the
21 report was prepared more than five months after the interview,
22 right? Richard Hiller?

23 A. Yes.

24 Q. And you see how the first two customers it says they were
25 prescribed Atripla?

1 A. Yes.

2 Q. And you don't mention how, when you count transfers,
3 there's a massive surplus of Atripla in Pharmacare, right?

4 A. Like I said, I wasn't involved in that aspect of the case.

5 Q. Yeah. But you got the email, right?

6 A. Yes, absolutely.

7 Q. And you didn't mention either in this part of the
8 affidavit where Atripla is mentioned, at least twice, or
9 anywhere else, Pharmacare had a massive surplus of Atripla, the
10 most expensive HIV drug, did you?

11 A. But in Paragraph 42, we're talking about Hillendale
12 Pharmacy.

13 Q. Ma'am, please answer my question.

14 A. Okay.

15 Q. You didn't mention anywhere this affidavit, that
16 Pharmacare, if you count transfers, had a massive surplus of
17 Atripla, the most expensive HIV drug, correct?

18 A. That's correct.

19 Q. All right. We can put aside Exhibit 70 for now and, I
20 think, close the binder for a moment.

21 A. Okay.

22 Q. Actually, you know what, I take that back.

23 Ms. Lating, you recall that you wrote a 302 on June 23rd,
24 2013, about some items that you found in a dumpster at
25 CareMerica, right?

1 A. I remember retrieving -- it wasn't -- okay. I don't know
2 the date of the interview -- I mean the 302. But I remember
3 retrieving items from a dumpster at CareMerica in June 2013.

4 Q. Well, let's get the date pinned down. Hold on one second.

5 A. Okay.

6 Q. So let's go to Tab 57. This is a redacted copy of that
7 302. It's in evidence. Plaintiff's Exhibit 57.

8 A. Yes.

9 Q. All right. And does this refresh your recollection that
10 you wrote this 302 on the exact date of June 23rd, 2013?

11 A. Yes.

12 Q. And that is one day before you wrote the transcript of the
13 audiotape of Ridolfi that we talked about earlier, right?

14 A. Yes.

15 Q. I think we can probably short circuit this, but
16 essentially, this incident came about, and the reason you went
17 to the dumpster is because at Plumtree, Lisa Ridolfi reported
18 that a pharmacy technician that she instructed to reverse the
19 claims for, was not reversing the claims for the prescriptions,
20 and instead was peeling off the labels, throwing them in the
21 trash, and restocking the medications; do you remember that?

22 A. That's not my recollection of what happened.

23 Q. Not your recollection. All right.

24 Please turn to Plaintiff's Exhibit 67. So Pam Arnold
25 wrote this report, memo to the Pharmacare file, July 17, 2013,

1 right?

2 A. Yes.

3 Q. And it was about events on June 19th, 2013, right?

4 A. Yes.

5 Q. So she waited until, like, six days before you presented
6 the final Lating affidavit to write this memo, right?

7 A. Yes.

8 Q. And it says that on June 19th, 2013, Pam Arnold -- I'm
9 paraphrasing -- received a text from Lisa Ridolfi, advising
10 that the pharmacy technician Lakshmi Veerareddy is in the store
11 this week to conduct reversals, right?

12 A. Yes.

13 Q. And the store is Plumtree, right?

14 A. Yes.

15 Q. It goes on to say, "Ridolfi explained that Lakshmi is
16 supposed to reverse the medication" -- meaning the claims,
17 right?

18 A. Yes.

19 Q. ". . . supposed to reverse the med claims, peel the label
20 off the medication bottle, place the bottle in the box to be
21 returned to stock, and give the labels to Ridolfi. However,
22 according to Ridolfi, Lakshmi was not giving the labels to
23 Ridolfi, as Ridolfi had asked her to do, but was throwing the
24 labels in the trash can."

25 A. Okay.

1 Q. Right?

2 A. Yep. That's exactly what it says.

3 Q. Do you remember this incident?

4 A. I do, but Lakshmi didn't -- okay.

5 Q. And this, in a text from Ms. Ridolfi the next day,
6 June 20th, 2013, are what led you to achieve that --

7 A. I'm sorry where is that? Can I see that report? Where
8 does it say -- there's another report.

9 Q. Right. I think we were just on it, but yeah, we can go
10 back to it. Actually, that's -- hold on.

11 Plaintiff's Exhibit 57 is the redacted version.

12 You do recall, Ms. Lating, having prepared to testify, and
13 you have a pretty good memory, it seems, that, you know,
14 Pam Arnold relayed texts from Ms. Ridolfi on June 19th and
15 June 20th, 2013, about the Lakshmi Veerareddy label incident,
16 right?

17 A. Yes.

18 Q. And that's what led you to going to the dumpster, right?

19 A. I went the same day she contacted me, that evening.

20 Q. Okay. So I think maybe the disconnect is that
21 Lisa Ridolfi was texting Pam Arnold on two consecutive days,
22 June 19th and June 20th, urging someone to go to the dumpster
23 to retrieve labels.

24 A. I went to the dumpster the same day Pam Arnold told me
25 someone needed to go to the dumpster now. And I --

1 Q. I'm sorry, go ahead.

2 A. No. I'm just saying, I think it was a couple of days that
3 Lakshmi was there, doing what she was doing.

4 Q. Right.

5 And what Lisa Ridolfi had reported, and what led you to go
6 to the dumpster and get these trash items, is that, as Arnold
7 said in the other report, it was the same thing, both days in
8 the row, that Lakshmi was defying Ridolfi's instructions and
9 throwing the labels in the trash, right? Peeling off the
10 bottles.

11 A. I disagree with that question. If you want to rephrase
12 it.

13 Q. What do you disagree about?

14 A. It wasn't under the direction of Ms. Ridolfi. Lakshmi
15 showed up at Plumtree, and she started peeling off labels, and
16 that was -- so . . .

17 Q. Okay. So putting aside who gave Lakshmi the direction,
18 okay, let's not deal with that issue --

19 A. Well, it's an important issue, but --

20 Q. Okay. We can maybe get into that.

21 After Lisa Ridolfi reported that Lakshmi was supposed to
22 have been reversing the claims for these prescriptions and
23 giving the labels to Ms. Ridolfi, Ms. Ridolfi said that in the
24 texts to Arnold that were relayed to you, that actually Lakshmi
25 was not doing what she was supposed to, and said she was just

1 throwing -- throwing the peeled-off labels in the trash, right?

2 A. Correct.

3 Q. All right. And specifically, Ms. Ridolfi said these
4 labels were peeled off of medication bottles, right?

5 A. Yes.

6 Q. All right. Now, let's go through some of this trash.

7 And I'm going to use initials -- actually, this is
8 probably in the report. I'm not sure.

9 (Discussion held off the record.)

10 **BY MR. GREENBERG:**

11 Q. So this is a 302 that you wrote on June 23rd, 2013, right?
12 Plaintiff's Exhibit 57.

13 A. Yes.

14 Q. And it has a pretty detailed inventory with prescription
15 numbers of these items that you found in the trash?

16 A. I think so, yes.

17 Q. The names are redacted, but you had the patients' names in
18 there, too?

19 A. I did.

20 Q. All right. I think we can do this by prescription number.
21 So this -- actually, this, maybe we can put on the ELM0. Maybe
22 we don't need to.

23 **MR. GREENBERG:** Your Honor, would it be okay to submit
24 photos of these items in evidence -- Your Honor has them --
25 after I show these?

1 **THE COURT:** Any objection to the photos instead of the
2 actual photos themselves?

3 **MR. EISER:** No.

4 **THE COURT:** All right. We can do that.

5 **BY MR. GREENBERG:**

6 **Q.** Ms. Lating, I'm just going to hand the box to you.

7 **A.** Can I stand up?

8 **Q.** Up to you. Whatever is most comfortable.

9 All right. So let's just kind of go through this.

10 You see there's a handwritten note; is it your
11 handwriting?

12 **A.** No.

13 **Q.** But someone wrote, on the top, "1B1," right?

14 **A.** It may have been our evidence people. That's not my
15 handwriting.

16 **Q.** It says "Trash from Dumpster at Old M. 6/20/2013"?

17 **A.** Yes.

18 **Q.** And this is the items that you found in the dumpster at
19 CareMerica on June 20th, 2013?

20 **A.** Yes, yes.

21 **Q.** All right. Let's take a look at some of these --
22 actually, let me sort of walk you through them.

23 **MR. GREENBERG:** My apologies. These are already in
24 evidence as Plaintiff's Exhibit 55.

25 **THE COURT:** Fifty-five. Collectively, as one exhibit?

1 **MR. GREENBERG:** Yes, the physical evidence.

2 **THE COURT:** All right. How many bottles do we have?

3 **MR. GREENBERG:** We will send you -- we have photos of
4 everything in the box that we'll send you. And we can give you
5 the unredacted copies.

6 **BY MR. GREENBERG:**

7 **Q.** So, Ms. Lating, first, there's this bottle that has --
8 well, the label of this bottle is not peeled off, right?

9 **A.** Correct. It's faded, but yes.

10 **Q.** Faded, but it's on the bottle.

11 **A.** Uh-huh.

12 **Q.** All right. Let's put that one aside for now. And let's
13 try to make sure we keep everything -- I know you want to --
14 you understand?

15 **A.** Yes.

16 **Q.** So these are prescription labels for a patient with the
17 initials C.R., right?

18 **A.** Yes.

19 **Q.** And the top one is a prescription from Dr. Shivani Myer?

20 **A.** Yes.

21 **Q.** And she was at Bon Secours clinic?

22 **A.** That's correct.

23 **Q.** It says Bon Secours and --

24 **A.** Stamped.

25 **Q.** Yeah. On all five of these labels, right?

1 A. Yes.

2 Q. All for patient C.R.?

3 A. Yes.

4 Q. And the bottom label is for Invega Sustenna, right?

5 A. Yes.

6 Q. And that's a pretty expensive one, right?

7 A. I don't recall the price.

8 Q. Okay. That's fine.

9 You see in Paragraph 16 of your 302, you see the
10 prescription number on that Invega Sustenna, it's 261802?

11 A. Yes.

12 Q. And you see that's the last prescription number for
13 this -- well, you don't see it here, but it's the last
14 prescription number in Paragraph 16?

15 A. Yes.

16 Q. And the fill date here, October 3rd, 2012?

17 A. Yes.

18 Q. That matches as well?

19 A. Yes.

20 Q. Okay. And here, it says the insurance was known to be
21 Aetna.

22 And let's look at some others. I'm just going to turn this
23 one over just so we kind of keep track. All right?

24 Now, these are also patient C.R. This one looks like it
25 was -- I should have asked you about the first set of five.

1 These are all labels still on their backings, right?

2 A. Yes.

3 Q. None of them looks like it's peeled off a bottle, right?

4 A. No. But they have staples.

5 THE COURT: Can you put Exhibit 57 on the monitor so
6 we can read along.

7 MR. GREENBERG: It's got the HIPAA stuff -- oh, wait,
8 Exhibit 57. Yes, we can do that. That's redacted.

9 THE COURT: All right. Go ahead.

10 MR. GREENBERG: Sorry, Your Honor.

11 BY MR. GREENBERG:

12 Q. So, Ms. Lating, you agree these were obviously not peeled
13 off of bottles, right?

14 A. Correct.

15 Q. And you understood that at the time?

16 A. I understood at the time that I retrieved the trash, yes.

17 Q. And you understood that these labels, at least these first
18 five, are not peeled off of bottles, correct?

19 A. Correct.

20 Q. All right. Let's put these -- that's the first bunch for
21 C.R.

22 Let's go through the next bunch for C.R. These are five
23 more labels for C.R., correct?

24 A. Correct.

25 Q. And the very first one is Invega Sustenna, right?

1 A. Yes.

2 Q. And the prescription date is December 7, 2012?

3 A. Yes.

4 Q. And the prescription number is 270550?

5 A. Yes.

6 Q. Oh, so this is also mentioned in your 302, right?

7 A. Yes. I inventoried everything in the box.

8 Q. You inventoried it.

9 A. Uh-huh.

10 Q. Okay. And these are also still on their backings, right?

11 A. Yes. With a staple, though. Uh-huh.

12 Q. But obviously not peeled off of any medication bottle.

13 A. Correct.

14 Q. All right. And these are five more for C.R. Four for a
15 patient named D.M. Four more for a patient named D.M. And
16 these -- one, two, three, four, five -- nine -- 13 labels are
17 also mentioned in your report, right? Do you want to take the
18 time to look?

19 A. Do you want me to --

20 Q. Sure.

21 A. -- try to find it?

22 Q. Yeah, you can.

23 A. Number 10. So these right here would be number 10 on my
24 list.

25 Q. Okay. Number 10.

1 A. And then these would be 17.

2 Q. And these are the paragraph numbers in your 302 that
3 you're referring to?

4 A. Well, I listed them by items.

5 Q. Right.

6 A. One through 32. I try to itemize them.

7 Q. I should have asked you -- let's go back to the very first
8 set of C.R., October 3rd, 2012. I think we found it on the
9 second page.

10 Invega Sustenna, 261802.

11 A. Number 23.

12 Q. Paragraph 23, very good. Thank you.

13 I mean, we can go through them one by one, but, I mean,
14 these are in the box of items you got from the trash, right?

15 A. Right. I tried to itemize them and inventory them as best
16 as I could.

17 Q. Right.

18 And so -- then there's some other stuff in the trash here,
19 like, miscellaneous labels. Some are just one label. Like
20 this is one for D.W.?

21 A. Yes.

22 Q. And this one is always on its backing that's not peeled
23 off of a bottle, it's obvious?

24 A. With a staple.

25 Q. Right.

1 None of these looks like it's peeled off of a bottle,
2 right?

3 A. No, no.

4 Q. You mean "correct"?

5 A. Correct, yep.

6 Q. All right. And so this one, let me just find this one in
7 your report, your 302.

8 A. 265348 -- it should be here.

9 Q. Let me see if I can help you.

10 This is another one, by the way, from Dr. Shivani Myer
11 from Bon Secours.

12 Do you see that?

13 A. Yes, I do. Dr. Myer.

14 It's number 23.

15 Q. All right. And then along with the labels and their
16 backings -- and I'm not going to go through all of them at this
17 time.

18 There's more. I think there's some for patient -- this is
19 one for patient D.S., obviously not peeled off of a bottle,
20 right, because it's on its backing, stapled to a bag?

21 A. Yes.

22 Q. Obviously not peeled off of a bottle?

23 A. Right.

24 Q. So then there's, like, some trash bags. And the one I
25 want to point out is the one -- oops -- that -- I'm trying to

1 find it. Here we go. See how your report -- go to the first
2 page of your report.

3 See how it says "the bag had a blue tie."

4 Do you see that?

5 A. Yes.

6 Q. And it said "HIPAA" on it?

7 A. Yes.

8 Q. So that's further confirmation it's the same thing, right?

9 A. That was written there for my benefit so that when I went
10 through the dumpster, I could easily find it.

11 Q. Right.

12 So it just confirms that you were retrieving what
13 Ms. Ridolfi reported, right?

14 A. Correct.

15 Q. All right. Now, I think we've probably done enough with
16 these labels for now.

17 **MR. GREENBERG:** Unless Your Honor has any questions?

18 **THE COURT:** I have no questions.

19 **BY MR. GREENBERG:**

20 Q. Thank you, Ms. Lating.

21 A. Sure.

22 Q. Ms. Lating, you didn't just write this 302, you also
23 attach some, I believe, photos to the full version, right?

24 A. Yes, I think I did.

25 Q. Yeah. And let's -- let's not put this one on the screen

1 because it has some HIPAA info. We'll give -- actually, it's
2 already in evidence. This one, please do not put on the
3 screen. But I think we can make the point without doing that
4 and Your Honor has a copy.

5 This is Tab 56.

6 **MR. GREENBERG:** Again, please do not display it.

7 **BY MR. GREENBERG:**

8 **Q.** Plaintiff's Exhibit 56. This is our understanding of the
9 final unredacted 302 with the attachments, from starting at
10 FBI001873, ending at FBI001910.

11 Why don't you take a moment to kind of flip through these
12 photos, Ms. Lating, so I don't have to ask you about every
13 single one. Just let me know when you've had a chance to
14 peruse it.

15 I believe the last one is at FBI -- actually, there's a
16 little -- I'll let you just --

17 **A.** Yes, I've completed reviewing them.

18 **Q.** And fair to say that these photos look much the same as
19 what we just looked at in the box?

20 **A.** They're actually -- I copied them -- I copied them on a
21 copier. I didn't take photographs.

22 **Q.** Oh, okay. Very good.

23 But whatever they are, they look much the same as what we
24 just looked at?

25 **A.** Yes, certainly.

1 Q. All right. And your report doesn't mention that -- it
2 doesn't say whether any of these labels looks like it was
3 peeled off of a bottle, does it?

4 A. No. My purposes of doing this --

5 Q. Ma'am, I just ask that one question.

6 MR. EISER: Objection.

7 THE WITNESS: No, absolutely not.

8 THE COURT: Yes, sir?

9 MR. EISER: Counsel needs to let the witness answer
10 the question. He insists that she answer one way, and if she
11 needs to answer the way she needs to answer --

12 THE COURT: All right.

13 Just let her finish the answer.

14 And answer the question in any way you think is
15 appropriate, Ms. Lating.

16 BY MR. GREENBERG:

17 Q. Let me ask this question again.

18 So Ms. Lating, the question is: Your report doesn't say
19 for any of these prescription labels or empty bottles whether
20 or not it shows a label that looks like it was peeled off of a
21 bottle or not, right?

22 A. That wasn't the purpose of drafting this 302.

23 Q. That wasn't my question. Your 302 doesn't say, for any of
24 these labels, whether or not it matches what Ms. Ridolfi
25 reported, does it?

1 A. I need you to -- if you could rephrase that question.

2 Q. Well, we went over this, how Ms. Ridolfi reported there
3 are labels being peeled off of bottles and thrown in the trash,
4 right?

5 A. Yes.

6 Q. And your report doesn't say, for any of these
7 prescriptions, whether the label -- and there are labels
8 mentioned, whether or not it looks like it was peeled off of a
9 bottle, right?

10 A. Correct. I don't have that noted.

11 Q. All right. We can move on from this. Thank you,
12 Ms. Lating.

13 Okay. All right. So this is not yet in evidence, but,
14 Ms. Lating, you testified maybe 10-minutes ago or roughly,
15 maybe a little longer, that you didn't recall a draft affidavit
16 that had a note saying Pharmacare customer complaints, five or
17 so interviews, matching billing/paid claims data?

18 A. I don't recall.

19 Q. And you don't recall having a note under there saying, in
20 that same draft, maybe five good examples -- and, I'll use
21 initials, K.B., D.S., N.J., G.F. G.S. and T.P.?

22 A. I don't recall that, but --

23 Q. Okay.

24 A. I did a lot of requests like that.

25 Q. All right. Let's show the first page of the email that

1 attaches this draft. And so the earliest-in-time email here,
2 Ms. Lating, is from you, April 8th, 2013, 7:28 p.m., right?

3 **THE COURT:** What's the exhibit again?

4 **MR. GREENBERG:** Oh, this is not yet in. It's marked
5 as Plaintiff's Exhibit 128.

6 **BY MR. GREENBERG:**

7 **Q.** Do you see that, Ms. Lating?

8 **A.** Okay. It's not in the binder.

9 **Q.** Yeah. So this is on the screen only.

10 **A.** Okay. Thank you.

11 **Q.** So do you see that your email, the earliest in time, is
12 April 8th, 2013, at 7:28 p.m.?

13 **A.** Yes.

14 **MR. EISER:** Objection. He's reading in a document
15 that's not in evidence, and it was not marked as a trial
16 exhibit, and it doesn't impeach anything.

17 **THE COURT:** All right.

18 Is it not a trial exhibit?

19 **MR. GREENBERG:** Well, I'm using it to refresh her
20 recollection. She says she doesn't remember.

21 **THE COURT:** All right. Well, ask her if it refreshes
22 her recollection.

23 **MR. GREENBERG:** All right. I mean, I just sort of
24 want to lay the foundation for the refreshing.

25 **BY MR. GREENBERG:**

1 **Q.** Ms. Lating, you see how -- I mean, this is you emailing a
2 bunch of folks in the investigation team, including Mosley and
3 Arnold, and attaching what the subject says is a "Rough Rough
4 Draft of a Search Warrant for Pharmacy locations in Reddy's
5 home," right?

6 **MR. EISER:** Objection. The procedure is, ask the
7 witness to read it, if it refreshes her memory. But you don't
8 read the document --

9 **MR. GREENBERG:** Your Honor, these are speaking
10 objections --

11 **THE COURT:** This is a nonjury trial. You've read it.
12 Just ask if it refreshes her recollection.

13 **BY MR. GREENBERG:**

14 **Q.** Ms. Lating, can you please turn to the --

15 **THE COURT:** Just ask if it refreshes her recollection.
16 You said that's all you're putting it up for. You don't need
17 to read it, just ask her to read it and see if it refreshes her
18 recollection --

19 **MR. GREENBERG:** I do need it to have her see the note
20 to see if it refreshes her recollection.

21 **THE COURT:** You need to what?

22 **MR. GREENBERG:** The specific comment that I was
23 referring to.

24 **THE COURT:** All right. Go ahead.

25 **BY MR. GREENBERG:**

1 Q. So I believe it's Page 22, that's now redacted, yeah.

2 So do you see it's a red letter F, and then it says in
3 black font, "Pharmacare Customer Complaints," and then in red
4 parenthesis "Five or so interviews matching billing/paid claims
5 data," and then the names are redacted?

6 A. Yes.

7 Q. Does this refresh your recollection?

8 A. No. But this would be typical for me when I'm drafting
9 the affidavit, to ask these questions like this.

10 Q. Okay.

11 MR. GREENBERG: We can take it down.

12 BY MR. GREENBERG:

13 Q. You were trying to find examples other than T.P. to
14 mention in the affidavit, right?

15 A. Yes, yes.

16 Q. But the only one you ended up mentioning was T.P., right?

17 A. And that would have been a team decision.

18 Q. But regardless of whose decision it was, the only one that
19 ended up in the affidavit was that non-Med-4 patient T.P.,
20 right?

21 A. Correct.

22 Q. Put that one aside, I guess.

23 MR. GREENBERG: Your Honor -- actually, this
24 document -- well, we don't need to move it in, I guess.

25 Court's indulgence for just one moment here. Oh,

1 actually, before we get to this -- actually, Your Honor, this
2 is not yet in evidence, but Ms. Lating testified before the
3 lunch break that she did not recall any communication with
4 Ms. Ridolfi relating to Ms. Ridolfi being a whistleblower. So
5 this is to refresh her recollection.

6 **BY MR. GREENBERG:**

7 **Q.** Now, Ms. Lating, you see how you're copied on this email
8 from Wilkinson to Arnold?

9 **A.** Yes.

10 **Q.** It says, "If Lisa is still not getting any advice from
11 Andy, would you ask her to write a letter to Judge Timothy J.
12 Sullivan, asking for new counsel and explaining why. She can
13 copy me, and I will send it along. He is responsible for the
14 appointment of attorneys. It can be handwritten."

15 Do you see that?

16 **A.** Yes.

17 **Q.** And then it gives Judge Sullivan's address?

18 **A.** Yes.

19 **Q.** Do you see -- let's highlight the part about explaining
20 why.

21 **A.** Yes.

22 **MR. GREENBERG:** So it's not on the exhibit list. This
23 is something -- oh, I'm sorry. I apologize. We should mark
24 this for -- my apologies. For identification, 137.

25 **THE COURT:** For identification only?

1 MR. GREENBERG: Yes.

2 THE COURT: All right.

3 BY MR. GREENBERG:

4 Q. So Ms. Lating --

5 MR. MILLER: Do you have 127 through 137?

6 THE CLERK: No. These are new exhibits. I guess
7 there's more.

8 MR. GREENBERG: So I'm trying to move things along.
9 We're doing this electronically. We can give you hard copies
10 later.

11 MR. MILLER: I'm saying are we skipping numbers?

12 MR. GREENBERG: We are at this point for the
13 impeachment, yes. Because we premarked them in the hope that
14 it would move things along faster.

15 THE COURT: All right. Go ahead.

16 BY MR. GREENBERG:

17 Q. Ms. Lating, you testified that, as far as you knew,
18 Pam Arnold would never withhold anything important from you
19 during the investigation, right?

20 A. I wasn't aware of that.

21 Q. Right. And so a couple days later, for whatever reason,
22 Pam Arnold forwarded this handwritten letter from Lisa Ridolfi
23 to Wilkinson, right? And says she has scanned it and it was
24 attached.

25 Do you see that?

1 A. Okay. I see that as an attachment --

2 Q. And you're not copied on this email, but because
3 Ms. Arnold would never withhold anything from you, you must
4 have seen the letter, right?

5 A. No, no. What --

6 Q. So your testimony is that even though you were copied on
7 the email about explaining why that letter was written, you
8 never actually saw the letter?

9 A. The email where I'm copied on it, I remember in a team
10 meeting, Pam had told us that Andy White is not returning
11 Lisa Ridolfi's calls and that something needs to be done
12 because Lisa is getting frustrated that she doesn't have her
13 lawyer available when it's time to -- for interviews. So
14 that's what that email -- where I'm copied on, is pertaining to
15 the frustration that Andy White's not taking calls from
16 Lisa Ridolfi. And that's, apparently, Sandy Wilkinson telling
17 Lisa to complain to Judge Sullivan then.

18 But that was my -- I do recall that there was some
19 frustration that Andy White wasn't taking Lisa Ridolfi's phone
20 calls.

21 Q. Okay.

22 A. And be available for legal guidance.

23 Q. All right. But the legal guidance wasn't only about
24 interviews, was it?

25 A. I have no knowledge of anything beyond representing her at

1 interviews at the United States Attorney's Office, period.

2 Q. Okay. And that included interviews about being a
3 whistleblower, right?

4 A. Absolutely not.

5 Q. Well, you said you were at the team meeting, right, where
6 this was discussed?

7 A. Several meetings, Pam would say that Lisa still hadn't
8 been able to reach Andy White.

9 Q. Okay. Well, maybe if we show you the letter, that'll
10 refresh your recollection. Let's scroll down to the letter.
11 By the way -- let's focus on the bottom right of the first page
12 first.

13 This was produced on May 25th of this year. Let's scroll
14 down to the letter.

15 And if we highlight the middle where it says, "I had a
16 question about how to be the whistleblower in the case, so I
17 sent him an email."

18 A. Yes.

19 Q. And the "him" is referring to Andy White, right?

20 A. I don't know. I don't know.

21 Q. Well, you were in the loop about the letter, right?

22 A. The first time I saw this letter is with my deposition
23 with you, and that's the truth. Okay.

24 Q. You're saying that's the truth. Why do you feel the need
25 to say that?

1 A. Because you're implying I've seen this email prior you to
2 showing it to me during a deposition, and I had not seen it.

3 Q. Well, we've got your word on that?

4 A. Absolutely. Absolutely.

5 Q. So your testimony, then, is that Pam Arnold had had this
6 letter and didn't show it to you, right?

7 A. Well, apparently, Sandy Wilkinson also was aware of the
8 letter as well. So --

9 Q. But, you know, you agree that Sandra Wilkinson, we
10 think -- you would not dispute that Sandra Wilkinson trusted
11 Pam Arnold, just like she trusted you and Robert Mosley?

12 A. I cannot speak for Sandy Wilkinson and her trust with --
13 how can I make a comment on that, Mr. Greenberg?

14 Q. Well, your understanding, as of July 2013, is that
15 Sandra Wilkinson trusted the core agents on the team, right?

16 A. I -- that would be a question to ask her. I can't -- I
17 can't answer on behalf of Sandra Wilkinson.

18 Q. You don't remember being asked this at your deposition,
19 and saying, yeah, your understanding was Wilkinson trusted the
20 core agents?

21 A. Agents. Agents.

22 Q. Yeah, and including Investigator Arnold?

23 A. She's not an agent, okay.

24 Q. Okay. She's an investigator, okay. But you do remember
25 that we cover this, and I don't want to have to spend the time

1 to, you know, show your deposition --

2 A. There is a difference between agent and investigator. I
3 had never worked with Pam Arnold prior to this.

4 So a question for Sandra Wilkinson would be: Did you
5 trust investigator Arnold, yes or no?

6 Q. Okay. But, you know, I don't want to have to spend the
7 time and show you a video on your deposition on this.

8 A. Okay.

9 Q. I mean, are you disputing that you testified that your
10 understanding at the time, in early July 2013, just as
11 throughout the Pharmacare investigations, that Sandra Wilkinson
12 trusted you, right?

13 A. I knew her for almost 20 years; yes, I think she trusted
14 me.

15 Q. And she trusted Robert Mosley, right, to your
16 understanding?

17 A. Right.

18 Q. And your understanding is also that Sandra Wilkinson
19 trusted Investigator Arnold, right?

20 A. Yeah. I -- I didn't know any differently, I mean --

21 Q. So given that, with Ms. Wilkinson trusting Investigator
22 Arnold, as you understood it, Ms. Wilkinson had no reason to
23 think that Pam Arnold didn't share this with you, right?

24 A. I don't know how to answer that. Why was I not copied on
25 this.

1 Q. Okay. But you do agree that the fact that Lisa Ridolfi
2 wrote a letter to the same judge who issued the search warrants
3 saying "I had a question about how to be a whistleblower in the
4 case," and this is it between your Google search warrant
5 affidavit and the Lating affidavit in July 23rd, 2013, that's a
6 significant fact, right?

7 A. Well, I mean, "I had a question about how to be a
8 whistleblower in the case."

9 She didn't file a *qui tam*.

10 Q. That's not my question.

11 A. Okay.

12 Q. I'm saying the fact that Lisa Ridolfi wrote a letter to a
13 federal judge about how to be a whistleblower in this case is a
14 significant fact, right?

15 A. I would have liked to have known that, yes.

16 MR. GREENBERG: All right. We can -- actually, you
17 know what, Your Honor, I don't think there's any reason not to
18 move this into evidence now. I mean, other witnesses were on
19 it. Regardless of what Ms. Lating is testifying to now, she
20 was copied in the first email and was involved in at least some
21 of the conversations. So we'll move it in now.

22 THE COURT: Any objection?

23 MR. EISER: No.

24 THE COURT: All right. Admitted.

25 MR. MILLER: Which number is that?

1 THE COURT: Give us the exhibit number again.

2 MR. GREENBERG: 137.

3 THE COURT: 137.

4 BY MR. GREENBERG:

5 Q. Ms. Lating, there weren't just one or two emails about
6 Med-4 sent to non-Middle Eastern employees at Pharmacare, there
7 were a whole bunch, in reality, right?

8 A. Could you repeat that question again.

9 Q. Let me try to rephrase it and make it shorter.

10 A. Okay.

11 Q. There weren't just one or two emails with Med-4 calendars
12 or Med-4 trackers sent to non-Middle Eastern employees at
13 Pharmacare, right?

14 A. I would agree. Yeah, I would agree that there was more
15 than -- I mean, it was a regular thing. I mean, I saw a bunch
16 of emails with the Med-4 lists or calendars on it, yeah.

17 Q. Okay. Let's just show you -- this is not yet in evidence,
18 but I don't see how it could be -- let's kind of -- actually,
19 really quickly -- well, you know what.

20 MR. GREENBERG: I think Your Honor gets the point.

21 THE COURT: I think you made your point.

22 MR. GREENBERG: Yeah. All right. If I could have the
23 Court's indulgence for, like, a five-minute break, and I may be
24 done or nearly done. Just to confer with co-counsel.

25 THE COURT: Let's keep it right here. Just take your

1 break and go ahead. It would be easier to let counsel confer.

2 **MR. GREENBERG:** Is it all right if we stop the clock?

3 **THE COURT:** Yes.

4 Stop the clock.

5 Yes.

6 (Counsel conferring.)

7 **MR. GREENBERG:** Ready to go back on the record, Your
8 Honor.

9 **THE COURT:** All right, go ahead.

10 **BY MR. GREENBERG:**

11 **Q.** Ms. Lating, you were aware, when you worked on the
12 Pharmacare investigation, because you've been involved in a
13 number of pharmacy -- let me sort of break this up.

14 You've been involved in a number of pharmacy
15 investigations before the Pharmacare matter, right?

16 **A.** Yes.

17 **Q.** And you knew that when a pharmacy was closed, the state
18 Board of Pharmacy had to come and make sure there are no more
19 drugs at the pharmacy, right?

20 **A.** Yes.

21 **Q.** And all of the drugs at the pharmacy at that point, either
22 before or on the day of the Board of Pharmacy inspection, which
23 occurred around the time of closing, like, within days, there
24 couldn't be any more drugs left in the pharmacy, right?

25 **A.** Correct.

1 Q. All right. We talk some about these audio recordings that
2 Ms. Ridolfi made. There wasn't a single recording by
3 Lisa Ridolfi that you heard where Mr. Annappareddy said
4 anything to suggest that he was committing fraud, right?

5 A. No.

6 Q. You mean "correct"?

7 A. Correct, correct.

8 MR. GREENBERG: Court's indulgence. I may be just
9 about done. Actually, I have maybe one to three more
10 questions. They'll be pretty quick.

11 BY MR. GREENBERG:

12 Q. Ms. Lating, you agree that to find probable cause that a
13 fraudulent claim was submitted, you not only need to look at
14 the claims data, you also have to interview the customer and
15 look at the log to see whether they signed it, right?

16 A. Yes, I would agree with that.

17 MR. GREENBERG: Nothing further, Your Honor.

18 THE COURT: All right.

19 Mr. Eiser, you may begin your direct.

20 - - -

21 CROSS-EXAMINATION

22 - - -

23 BY MR. EISER:

24 Q. Good afternoon, Ms. Lating.

25 A. Yes.

1 Q. There are -- are there other ways of determining whether
2 or not drugs were delivered to the patient?

3 A. Logbooks.

4 Q. Other than a logbook? For example, if the drugs that are
5 billed for are piled up in the store, six months later you can
6 tell that it wasn't delivered to the patient, right?

7 A. That's correct.

8 Q. And I suppose you could interview the patient also, and
9 they could tell you if they had their drugs delivered to them.

10 A. Yes.

11 Q. Did both of those things happen in this investigation?

12 A. Eventually. Post search warrant, a lot of interviews of
13 the customers happened --

14 MR. GREENBERG: Objection, Your Honor. The discussion
15 of the post search warrant investigation acts.

16 THE COURT: We covered that in pretrial conference.
17 I'll let it in with the understanding it might go to causation
18 or damages.

19 I'll allow it, overruled.

20 BY MR. EISER:

21 Q. Go ahead.

22 A. Yes. To interview the customers would be a way of
23 corroborating what we're seeing for the undelivered bags just
24 to make sure that they didn't get those medications.

25 Q. And Ms. Gutberlet, in her investigation, before you got

1 involved, you saw her report, she interviewed quite a few
2 patients who didn't receive their --

3 A. She did. I read them all. Yes.

4 Q. I'm going to back up and put this in order.

5 A. Okay.

6 Q. Can you tell the judge where you were born and raised.

7 A. I was born in Massachusetts. And I spent most of my life
8 in Massachusetts until I went into the academy.

9 Q. Okay. Tell us about your education before going into the
10 academy.

11 A. I did one year of nursing school.

12 Left nursing school, and did my four-year bachelor's
13 degree in psychology.

14 Worked in accounting for four and a half years. At the
15 time I was in graduate school, while I was working in
16 accounting, and I got my orders to go to the academy. So I was
17 one semester short of my Master's in Business Administration.

18 Q. And when did you go to the FBI academy?

19 A. July 25th, 1988.

20 Q. And how long is that program at the academy?

21 A. Back in 1988, it was 13 weeks, living there.

22 Q. And what happens during the 13 weeks?

23 A. We do firearms training, legal training, defensive
24 tactics. And a lot of -- kind of learning how to do things,
25 like surveillance, and arresting, and things like that. And

1 then we learn how to -- we do scenarios where we arrest people
2 in a little town in Quantico called Hogan's Alley, it's a
3 fictitious town. And we do different scenarios. We learn how
4 to write affidavits and complaints for arrest.

5 Q. How did you learn that, do they have instructors --

6 A. They do. They have lawyers that come in, and some of them
7 are agents. But sometimes we have lawyers that come in and
8 help us with testifying and cross-examination with moot courts
9 during that training.

10 Q. Okay. Describe first the progression of your career after
11 you got out of the FBI academy; location, title, work?

12 A. I got my orders to Richmond, Virginia. I was there for
13 four and a half years. It's a small office of 25 agents. I
14 was the only female. And I got to work every violation you can
15 imagine. From kidnappings, to bank robberies, to white-collar
16 crime, to child pornography. So I got, really, a lot of
17 experience being in Richmond.

18 In May 1992, I got transferred to Baltimore.

19 Q. How long were you in Baltimore?

20 A. Until I retired on September 30th, 2017.

21 Q. What types of matters did you work on while in Baltimore?

22 A. When I came to Baltimore, they asked me if I would be the
23 lead in healthcare fraud investigations. Because I had one
24 year of nursing school, I knew the medical terminology, I knew
25 how to read medical records. And in nursing school, you know,

1 I got to work alongside doctors and nurses. I did actual
2 clinical work. So I kind of had the experience of how a
3 hospital ran and things like that. So they asked me if I would
4 focus my attention on healthcare fraud.

5 But I worked other things during the mortgage fraud
6 crisis. I got really involved in that.

7 But healthcare fraud has always been my specialty. When
8 something came up on the squad, it would be, "Maura, can you
9 handle this case?" So . . .

10 Q. How did you feel about your job during the long career
11 with the FBI?

12 A. Loved it every day. Loved it.

13 Q. Why is that?

14 A. I just -- I love working cases. I'm very analytical, from
15 my accounting background. And I just enjoyed working with
16 people. And, you know, trying 100 percent every day, or
17 110 percent every day. But this was my dream job, and I got to
18 do it, so it was pretty cool. That -- 29 years of doing it,
19 and I'm still doing it. So . . .

20 Q. Thank you.

21 Were you good at it?

22 A. I think so. I think so.

23 Q. Did you receive praise for your work?

24 A. I did. I did.

25 Q. Did others in the FBI have a nickname for you in the way

1 you did your work?

2 A. I was referred to as Betty Bureau because I was always
3 citing bureau policy, and so, yes, I was called Betty Bureau.

4 Q. You mentioned that you had investigated healthcare fraud.
5 Do you know how many healthcare fraud cases you worked on as an
6 investigator?

7 A. I know dozens. They're always long-term cases, so at
8 least a dozen major cases.

9 Q. Of those, how many were pharmacies, if you know?

10 A. Since I've been in Baltimore, I've worked two of my own.
11 And then one I helped out for another agent in our Rockville
12 office.

13 Q. Okay. Describe your experience with preparing and
14 submitting search warrant affidavits.

15 A. I have -- when I draft an affidavit, I do have my standard
16 language. I put in the beginning, my background. So the first
17 three paragraphs are usually standard in my affidavits.

18 The way I've always drafted an affidavit, and I learned
19 this from my training agent in Richmond, Virginia, put
20 everything in. Put everything in that you know about the case.
21 And then let the AUSA or your co-case agents look at it and
22 give you some feedback on it.

23 So the drafts are always everything I know from what
24 people have given me from reports or my own -- my own reports.
25 And then let others tell me their feedback.

1 Q. How many search warrant affidavits have you prepared and
2 submitted in your career?

3 A. Conservatively, I would say -- including Title III
4 affidavits, I've done two of them, I would say at least 50 or
5 more I've done in my 29 years as an agent.

6 Q. Have you ever had one suppressed by a court?

7 A. No. And I've been through suppression hearings.

8 Q. Did you know Mr. Annappareddy prior to your work on his
9 criminal case?

10 A. No.

11 Q. Did you know anybody who knew him?

12 A. No.

13 Q. Had you ever heard of him from any person or source?

14 A. No.

15 Q. After you came on the case, aside from the alleged
16 criminal conduct that you were investigating, did you have any
17 sort of personal dislike of Mr. Annappareddy for any reason?

18 A. No.

19 Q. When did you become involved in the Pharmacare
20 investigation?

21 A. I met with Medicaid, Robert Mosley, Cathy Pascale, on
22 January 23rd, 2013, at their office, the Medicaid office.

23 Q. I'm going to show you what we've marked that's in evidence
24 as Defense Exhibit 17. It is a memo -- I'm sorry, it's an FBI
25 form document. Can you identify what that is?

1 A. Yes. It's what we call an electronic communication. It's
2 my opening electronic communication to request that this case
3 be opened and assigned to me.

4 Q. Who are the people that are listed on this?

5 A. My supervisor is Adam Drucker. It was approved by Marisa
6 Perez. Because, I believe, Adam was not -- when the supervisor
7 is not available, then you would have someone else approve it,
8 so that's why I put Marisa Perez's name, to approve it for
9 opening.

10 Q. What's a full field investigation?

11 A. A full field is that we're not going to have any
12 limitations. We can do surveillances. We can do -- we're
13 eventually going to do, like, grand jury subpoenas and things
14 like that.

15 A preliminary one is we're not sure where this is going,
16 and we're going to be limited, per bureau policy, on what we
17 can and cannot do.

18 So I'm asking for a full field, because what I've heard in
19 that meeting, I think we should be opening the case.

20 Q. What's the process for getting a full field investigation
21 opened?

22 A. I just have to explain in my electronic communication that
23 I believe that this is worth investigating, and that I believe
24 there's healthcare fraud being committed; in this case, by
25 Mr. Annappareddy, Wayne Dyke, and Pharmacare Discount Pharmacy.

1 Q. So what we marked as Defense Exhibit 17, is that your
2 request to open a full field investigation or the approval of
3 it or both?

4 A. It's the official request that FBI Baltimore open up this
5 case and assign it to me.

6 Q. Was it also approved?

7 A. Yes, it was.

8 Q. This document confirms that the -- well, let me ask you,
9 what's the predicated event that causes you to open this
10 investigation?

11 A. Well, I have to -- I have to have an identified victim,
12 insurance company. In this case, it's Maryland Medicaid,
13 potentially Medicare, and private insurance programs.

14 It's a 209A classification, which means I'm telling my
15 supervisor or the acting supervisor, that 209A means, I believe
16 that there's government-funded programs that are being
17 defrauded.

18 209B would be in the case file number, in the case ID
19 number, would mean -- I think it's private insurance.

20 **MR. GREENBERG:** Your Honor, I'm trying to give
21 Government counsel a lot of latitude with the leading and the
22 hypotheticals and such, but I do think I'm constrained to note
23 for the record that this document was highlighted by counsel,
24 it appears, not the witness. And that I'm not sure that is
25 appropriate if this is highlighting that's already been on the

1 document before, it's unclear.

2 **THE COURT:** Well, we've had lots of highlighting on
3 documents by counsel thus far, haven't we?

4 **MR. GREENBERG:** Just temporary to draw attention. I
5 just want to make the record clear --

6 **THE COURT:** What I'm going to take home is going to be
7 permanent, not temporary because I've asked you to submit it to
8 me.

9 **MR. GREENBERG:** Yes, Your Honor. But I just want the
10 record to be clear that this --

11 **THE COURT:** I understand it. This witness did not put
12 this highlighting on this document.

13 **MR. EISER:** Yes, Your Honor. And the official
14 exhibits have no highlighting on them, the ones we submitted to
15 the Court.

16 **THE COURT:** All right. So no different than what
17 we've seen so far.

18 **MR. EISER:** That's correct.

19 **THE COURT:** Go ahead.

20 **BY MR. EISER:**

21 **Q.** The opening of the field investigation says it was
22 initiated from a *qui tam* complaint; is that right?

23 **A.** Yes.

24 **Q.** And is that unusual for the FBI to open a field
25 investigation upon receipt of a *qui tam* complaint?

1 A. Usually, we don't. Because I had sat down with the
2 Medicaid investigator, and the attorney Cathy Pascale and
3 Robert Mosley and Laurie Gutberlet, we would have received this
4 *qui tam*. But sitting down with them, I felt that we should
5 open up a full field.

6 One of my jobs, being a healthcare fraud agent, is my
7 supervisor would have eventually given me this to review. I
8 hadn't reviewed it yet.

9 Q. This memo documents that there was a meeting, is that
10 right, between you and these other agency and investigators; is
11 that right?

12 MR. GREENBERG: Your Honor, I would object to the
13 leading.

14 THE COURT: Well, do you want to rephrase the
15 question?

16 BY MR. EISER:

17 Q. Who did you meet with before preparing this memo?

18 A. The Medicaid Fraud Control Unit attorney, two
19 investigators, Robert Mosley, I believe James Ryan from Defense
20 Criminal Investigative Service, and I'm not sure Jimmy Young
21 showed up. Then Michael DiPietro from the United States
22 Attorney's Office was there, as well.

23 Q. Is that a group of people who had been on the
24 investigation for a while before you got involved?

25 A. Yes.

1 Q. What was discussed at that meeting?

2 A. What they had done over the past year, and what they think
3 was going on based on the work of Medicaid investigator, Laurie
4 Gutberlet.

5 Q. What did they think was going on?

6 A. That they were billing each month for available refills.
7 And if they weren't able to be delivered, they weren't
8 reversing them. And that was basically it. And sometimes not
9 filling at all, as well.

10 Q. Were documents shared at that meeting?

11 A. I did not get the notebook of reports at that meeting, but
12 I did get it a few days later. And that was all the work
13 that's been done in 2012, for me to review and get up to speed,
14 because I was -- I was not as up to speed as everybody else in
15 the room.

16 Q. When you became involved in the investigation, how was the
17 investigation structured, the team, the roles?

18 A. Well, it was discussed in the meeting that Lisa Ridolfi
19 would be handled by the Medicaid fraud investigator, Laurie
20 Gutberlet, which I was fine with. Medicaid was considered the
21 lead in this because they had been involved in -- you know,
22 since April 2012ish, which I was fine with. I'm always happy
23 just to assist and not be the lead agent or investigator. I
24 usually am, but it was refreshing not to be for once. So, yes,
25 that was the understanding, that Medicaid was the lead because

1 they had been on it the longest. Robert Mosley had been on it
2 longer than I was. And I was to offer my resources at the FBI
3 to help in any way.

4 Q. Okay. Did you review all of the memos and reports
5 prepared by the Maryland Medicaid investigators at some point?

6 A. As soon as I got the book, I started reading it. And one
7 of the first tasks I had was -- because I had the experience of
8 drafting affidavits, unlike anybody else on the team, so my
9 task was read the notebook of all of the reports from 2012 that
10 had been done in this case, and start drafting an affidavit,
11 which is very easy for me to do. It was a unique situation
12 because I'm not usually reading someone else's work; usually
13 it's my work product. But I read Laurie's reports, and I
14 started drafting an affidavit very soon after. And I had a
15 draft, you know, probably within early February.

16 Q. How did the process proceed from there when you had your
17 first draft with the team and the affidavit?

18 A. As soon as I had a draft, that's when the emails started
19 flowing back and forth, asking for feedback. I was shown a
20 bunch today. And that was typical of me putting in caps
21 sometimes, like, in the body of the affidavit, like, "Hey, you
22 know, let's -- let's insert something here."

23 So as I read Laurie's reports, I could tell there was
24 things that I personally wanted filled in, things that I think
25 still needed to be done on this case for me to feel comfortable

1 swearing a warrant. So it was a give and take with the whole
2 team and the two prosecutors, giving me their feedback on,
3 "Edit this, keep this in, let's change this, I don't like that
4 wording." And I'm always open to that feedback, especially
5 from my legal people.

6 It's a give and take when you draft an affidavit,
7 especially when you're with so many investigators and agents.
8 You welcome their feedback, another pair of eyes to look at
9 what you've written. Because, basically, I'm writing an
10 affidavit from somebody else's hard work. So I wanted to make
11 sure that I got everybody's feedback on it.

12 Q. How did you do that? Were there meetings? Phone calls?
13 How did you get everybody's feedback?

14 A. I would also send a draft. And you'll notice in the
15 emails, I'll put the date of the draft so that everybody knew
16 what draft and what date I'm sending. So any attachments you
17 see in email chains it could be, you know, April 16th or, you
18 know, February 15th or whatever and the year. And I basically
19 will -- when they open it up, they can see in red or in bold,
20 like, okay, somebody help me with this, someone give me
21 feedback.

22 And then, on a weekly basis, sometimes more than a weekly
23 basis, couple times a week, we would get together, and we sit
24 around the table, and everybody would have their draft open on
25 their laptop, and they would give me their feedback,

1 especially, you know, Sandra Wilkinson and Cathy Pascale on
2 what they liked and they didn't like in it. Or, "This is too
3 much, you don't need this." And that's me putting everything
4 in and then letting everybody help me edit it down to what we
5 really need for the probable cause.

6 Q. You mentioned weekly meetings. When did those start and
7 how long did they continue?

8 A. We started very early on because there was so many people
9 involved in this case. We would have team meetings, and then
10 there would be a breakout session where those that were
11 handling the MEDIC analysis, they would have a separate meeting
12 that I wouldn't be a part of. Only because I had -- you know,
13 I was focusing on the affidavit. So that I would attend the
14 general team meeting, and then there would be a breakout
15 session with those that needed to discuss the MEDIC part of the
16 case.

17 Q. Okay. I want to ask you about the members of the
18 Pharmacare investigative team. Peggy Gayhardt was the chief
19 fraud investigator at Maryland Medicaid. Did you ever meet
20 with her?

21 A. Yes. And I've worked with Peggy on other cases before. I
22 know Peggy, yes. I knew her before.

23 Q. Do you know what her experience is --

24 MR. GREENBERG: I don't see -- what exhibit is this?

25 MR. EISER: I just -- just it's a memory aid rather --

1 I want to go down the list of the people that worked and ask
2 her about --

3 **THE COURT:** It's just a list of the investigative
4 team. You object to her using a list of --

5 **MR. GREENBERG:** Well, I mean, I don't want to --
6 object if it's not in evidence. I mean, I don't know where
7 that came from.

8 **MR. EISER:** It's just demonstrative.

9 **THE COURT:** I'll overrule the objection.
10 Go ahead.

11 **BY MR. EISER:**

12 **Q.** Laurie Gutberlet, had you worked with her?

13 **A.** No.

14 **Q.** Was she a fairly experienced investigator?

15 **A.** Well, I -- as I read her reports, and met her once before
16 I started reading her reports, I was very impressed with her
17 presentation at the meeting, as well as when I started reading
18 her reports, how well-done they were and very thorough. I was
19 very impressed. And then as I got to know her, I was even more
20 impressed. I thought she was doing some great work and putting
21 very detailed reports together.

22 **Q.** Did you have any reason, when you first came on the case
23 and you're reading Laurie Gutberlet's reports, to believe that
24 she had misstated or omitted any important facts in her
25 reports?

1 A. No, no.

2 Q. Jeremy Dykes, did you know him?

3 A. No, not before. I had very little contact with him
4 throughout the whole case. He was more part of the MEDIC team.

5 Q. When you say "MEDIC team," what do you mean by that?

6 A. Well, like I said, we would have a general meeting, which
7 I was kind of, like, in the forefront of that. Because the
8 general meeting was, "I'm drafting an affidavit, I want
9 everybody's feedback," and we're getting together to discuss
10 it, and we're doing a roundtable discussion. People would have
11 their laptops open with their draft, and I would make any
12 changes that they suggested during the meeting, or tell them to
13 send me an email, you know, after we've discussed the
14 affidavit. And then afterwards, a lot of times, it would be
15 like, "Okay, now we're going to have another meeting to discuss
16 MEDIC." So Jeremy Dykes, I can't remember him ever being at
17 the general team meeting that I was at.

18 MR. GREENBERG: Your Honor, I understand you're
19 overruling the objection. But just, at the minimum, we would
20 respectfully request this be marked as an exhibit, and that
21 there would be some information on at least who prepared it.

22 THE COURT: Do you have any objection of making it an
23 exhibit?

24 MR. EISER: No, Your Honor.

25 THE COURT: All right.

1 What's the next number up for defense?

2 **MR. EISER:** Ninety-five.

3 **THE COURT:** It's Defense Exhibit 95.

4 Go ahead and ask her who prepared it, or you can tell us
5 who prepared it.

6 **BY MR. EISER:**

7 **Q.** You didn't prepare this, I did?

8 **A.** I did not. And Peggy Gayhardt's name is misspelled.

9 **Q.** Thank you.

10 The Cathy Pascale, did you know her before getting
11 involved in this investigation?

12 **A.** I did not.

13 **Q.** Were you impressed with her experience?

14 **A.** I was very impressed with her.

15 **Q.** How so?

16 **A.** She was such a team player and such a help with the
17 affidavit. Her and I worked together to do the August
18 affidavit in her office, and she was just very, very helpful.
19 And I liked her advice and her legal mind, drafting an
20 affidavit. And I -- I mean, I sat in her office, and we did it
21 together. Instead of me usually writing it by myself and then
22 getting feedback, her and I went back and forth on drafting --
23 drafting it. So I was impressed with her legal mind.

24 She's very -- just very personable to work with.

25 Throughout the trial as well.

1 Q. Michael DiPietro, had you worked with him before?

2 A. I had not. I knew of him to say hi. But I didn't know
3 him.

4 Q. What was his role in the Pharmacare investigation?

5 A. He was -- he was very involved in the MEDIC part of this
6 case. And Robert Mosley and him, and I assume Jeremy Dykes,
7 because I was not at these meetings, and Pam Arnold and Laurie
8 Gutberlet would get together and talk about the MEDIC in the
9 breakdown session after we would have general team meetings,
10 often.

11 Q. Who were the members of the MEDIC team that you're
12 referring to? I mean, you just mentioned Michael DiPietro.
13 Who else?

14 A. Jeremy Dykes. Catherine Pascale would go to those
15 meetings. Pam Arnold. I'm not sure James Hagin went to those
16 meetings. Robert Mosley was always there. And Jimmy Young did
17 not go to those meetings.

18 Q. So you've got -- on the MEDIC team, you've got Jeremy
19 Dykes, he's an Assistant Attorney General; Cathy Pascale, she's
20 an Assistant Attorney General; Michael DiPietro, he's an
21 assistant U.S. Attorney; and you have Robert Mosley, who's a
22 special agent.

23 MR. GREENBERG: Objection to the reading and leading.

24 BY MR. EISER:

25 Q. Well, my question is --

1 **THE COURT:** Overruled. This is just preliminary and
2 undisputed matter. Leading is allowed on things such as this.

3 Overruled.

4 **BY MR. EISER:**

5 **Q.** Who is leading that team? Who has the most knowledge,
6 experience about analytical crunching of numbers, if you know?

7 **A.** I wouldn't know because I wasn't part of those -- those
8 meetings.

9 **Q.** Okay. To the extent you know, what was Robert Mosley's
10 main job on the MEDIC team?

11 **A.** He was the liaison with the MEDIC contractor. Whatever
12 they needed, he was supposed to get that for them.

13 Like, I remember one team meeting he said at the meeting
14 he was working on the list of wholesalers that he needed to
15 subpoena. And that was something that would come up often,
16 like, what's the status of the subpoenas to the wholesalers, do
17 we have the complete list, and things like that.

18 But he was mainly the MEDIC liaison. He was the only one
19 that would deal with them to set up conference calls or
20 whatever they were doing. And I would just hear that during
21 team meetings before they would break out and go have a
22 separate meeting.

23 **Q.** When you say "liaison," does that involve bringing data
24 from Medicare, Medicaid to the experts who were analyzing it?

25 **A.** Yes. And then during meetings, either Laurie or Pam would

1 be asked for Robert, like, "The MEDIC needs claims data for
2 blah, blah," and during certain time frames or whatever. I
3 would hear that in meetings of, you know, what need to get
4 done. And Robert's input on those meetings would be, "I'm
5 still waiting for claims data, Pam," or "I'm waiting for claims
6 data, Laurie. They need it, and they need it for this date
7 range," or whatever.

8 Robert was the one that was providing to the MEDIC
9 contractor what they needed and getting -- you know, and, I
10 guess, relaying to the Medicaid investigators what was needed
11 from them, pretty much was the claims data.

12 Q. We skipped over -- if you know, what was James Hagin's
13 role in the investigation?

14 A. He came on when Laurie was leaving. I don't recall his
15 particular role in this case, except I think because he was an
16 experienced investigator and retired police officer. Same with
17 Laurie Gutberlet, she was retired police officer with Baltimore
18 City Police. I think he came on board to assist Pam Arnold
19 with whatever needed to be done since Pam Arnold was not
20 retired law enforcement.

21 Q. Had you worked with Pam Arnold before?

22 A. I had not.

23 Q. Was she an experienced investigator?

24 A. My recollection, she was an insurance investigator before
25 she became a MEDIC -- Medicaid investigator. I'm not sure she

1 really -- just working with her, for the time that I worked
2 with her, I don't think she really had an understanding of the
3 legal process of things. But she was one of those individual
4 that if you asked her, like, "I need this," like, she got it.
5 Or, "You need to ask Lisa this," or "Robert said you need
6 claims data," she would have it to him. She was -- she was
7 very task oriented, and she would complete her tasks. I never
8 remember any team meeting where Pam hadn't done what she was
9 told to do from the last meeting. So she was a hard worker.
10 She was.

11 Q. James Ryan, special agent, had you worked with him before?

12 A. I had not.

13 Q. What was his role in the investigation?

14 A. His role became very important because, when it came to
15 the trial, we had so much drugs that we had marked as
16 evidence --

17 MR. GREENBERG: Objection, Your Honor, to the
18 discussion of the post-indictment evidence on this issue.
19 There's no foundation having been laid for it. It is all of
20 the --

21 MR. EISER: I'll withdraw the question.

22 THE COURT: All right. Withdrawn.

23 BY MR. EISER:

24 Q. Don't tell me what Mr. Ryan did after --

25 A. Okay. James Ryan, I think, was asked to pull claims data

1 for Champus or TRICARE, the military insurance programs. I
2 don't recall anything else. I don't even recall him giving me
3 feedback on the affidavits.

4 Q. Was he sort of the least-experienced people -- person on
5 the team, if you know?

6 A. I would consider Pam Arnold to be the least experienced on
7 the team.

8 Q. Okay. I think you said you had worked with Robert Mosley
9 before?

10 A. I knew Robert Mosley for almost -- at least 15, 16 years,
11 and I worked with him on a case when he was a brand new agent.
12 So I've known him since day one of becoming an agent.

13 Q. Is he a reliable agent?

14 A. Yes.

15 Q. Trustworthy?

16 A. Yes. We were friends.

17 Q. Sandra Wilkinson, had you ever worked with her before?

18 A. Yes, I have.

19 Q. How -- for how long have you known her?

20 A. Robert Mosley and I actually had a case with Sandra
21 Wilkinson many, many years ago, prior to the Pharmacare case.
22 I knew Sandy. She was on the healthcare fraud steering
23 committee, so I knew her.

24 Q. What was her position in the U.S. Attorney's Office, if
25 you knew?

1 A. She was, like, deputy chief of major crimes. She became
2 that when the Pharmacare case was being worked.

3 Q. Okay.

4 A. So she was supervisor, management.

5 Q. Jimmy Young, had you worked with him before?

6 A. Yes. Jimmy Young was actually, he's with -- he's a
7 special agent with office of personnel management. They handle
8 the Blue Cross/Blue Shield federal employee health program.
9 Whenever they're defrauded, he gets involved. So he actually
10 worked on my squad. He had a desk on my squad. So he kind of
11 just came on the case because it was on my squad, this
12 investigation.

13 Q. In your estimation, was this a solid investigative team?

14 A. It was. Everybody had something to offer in this case,
15 and everybody was a hard worker, so yes. It was nice to have
16 all of this expertise on a team.

17 Q. After you became involved in the team, what investigative
18 steps did you take after -- after you became involved in
19 January of 2013?

20 A. Well, my major focus was to keep drafting the affidavit.
21 And any new information or reports that were prepared after I
22 got the notebook, I would add it to the notebook, and I would
23 incorporate it into the affidavit if I thought it was something
24 that could be used for the probable cause. And then, once in a
25 while, I would participate on surveillances or dumpster-diving

1 in the middle of the night or whenever. But for the most part,
2 I was trying to stay back a little bit so that no one got wind
3 that the FBI was investigating. So you didn't see me doing any
4 interviews or anything. My main goal was the affidavit,
5 because I was the most experienced person on the team.

6 Q. Did you submit a subpoena to Google to obtain emails
7 exchanged among Pharmicare employees?

8 A. I requested a subpoena, and we served a subpoena to Google
9 for subscriber information, which is, we wanted to know who was
10 behind each email address. And we need that to then generate
11 up and start drafting an affidavit a search warrant for Google.

12 So, yes, I did a subpoena.

13 Q. What did you get back from Google before you submitted the
14 affidavit?

15 A. We got who -- the individuals associated with each email
16 account.

17 Q. Did you review actual emails?

18 A. When I got the Google production, I did, yes.

19 Q. When was that?

20 A. I was looking through my case file, just to refresh my
21 memory. I really didn't get too involved in the email review
22 until -- until later, because my focus was trying to get the
23 affidavit done before.

24 Q. How many emails were there total?

25 A. I would say at least 50,000 emails. It dated back to,

1 like, 2008. Because with Google, even if you delete an email,
2 they still can retrieve it. So there was a lot of emails to
3 review, and we didn't review them all, of course.

4 Q. Did you -- in the course of your work, did you review the
5 *qui tam* complaint filed by Dennis Tokofsky?

6 A. I did.

7 Q. And did you also review the follow-up interview with
8 Mr. Tokofsky that was held on August 23rd, 2012? And I'm going
9 to show you what we've marked as Defense Exhibit 7, which is in
10 evidence.

11 A. Yes.

12 Q. And Page 1 of Defense Exhibit 7 lists several of the
13 people we just talked about; is that right?

14 A. Yes.

15 Q. How is it that this group of people wanted to meet with
16 Mr. Tokofsky?

17 A. Because these were the people that were involved in the
18 case in 2012.

19 Q. Did any of these investigators indicate that they found
20 Mr. Tokofsky's information to be unreliable?

21 A. It was never expressed to me that, no.

22 Q. Did you have any reason to find Mr. Tokofsky unreliable?

23 A. I only met him at the trial and just --

24 Q. Right. But based on your review of the record?

25 A. No, no. What he said, I could corroborate with other

1 reports that Laurie Gutberlet had done. So, yeah, I thought
2 his information was -- was accurate.

3 **Q.** If it turns out that he claimed to you-all that he
4 resigned, but Mr. Annappareddy now claims he was fired, would
5 that make him unreliable to you?

6 **MR. GREENBERG:** Objection to the hypothetical.
7 Calling for speculation.

8 **MR. EISER:** It's not hypothetical. Those are the
9 questions --

10 **THE COURT:** That's an issue that's been raised in this
11 case. I think it's a proper response.

12 Overruled.

13 **THE WITNESS:** I only knew that he had resigned, and I
14 knew that from the interview with him.

15 **BY MR. EISER:**

16 **Q.** If you had also known that Mr. Annappareddy claims that he
17 was fired, not resigned, would that impact your assessment of
18 his reliability.

19 **A.** No. Because if his information that he provided to the
20 investigators and agents could be corroborated with other
21 reports that I read, no, I wouldn't have any problem with that.

22 **Q.** Okay. And I think you've already -- did you review the
23 four prior interviews with Lisa Ridolfi that with we've gone
24 over in this case?

25 **A.** Yes, yes.

1 Q. Did the team attempt to have Ms. Ridolfi wear a wire?

2 A. She did wear a wire.

3 Q. Was that before you got involved?

4 A. No. No.

5 Q. Can you explain what that is and what they found?

6 A. When I got involved, I gave her a recording device to wear
7 at work, and when she had conversation, she could turn it on
8 and off. Unfortunately, she never shut the thing off so it
9 went, you know, eight hours straight. But the instructions
10 was, if you were going to engage in a conversation that you
11 thought should be recorded, then turn it on.

12 Q. How many days, if you know, did she wear the wire?

13 A. I think -- I think -- she always had it for weeks, just to
14 have it with her and available to turn it on in her pocket, if
15 need be.

16 Q. When was that, approximately?

17 A. Well, I think it was -- I would say I met with her to sign
18 the consent to record on or about February 26, 2013. And I
19 think she recorded something within 24 hours of her signing the
20 consent to record form.

21 Q. I didn't catch your date. February what?

22 A. February 26, 2013, I went to her house with Sandra
23 Wilkinson and Laurie Gutberlet to have her sign the FD473,
24 which is a consent to record. You have to legally have a form
25 that they have to sign that they're okay with being recorded.

1 And then within 24 hours, I think she had her first
2 conversation with Leshawn Miller, one of the delivery guys. So
3 I would say on or about February 27th, she did her first
4 recording, 2013.

5 Q. When did she return the recording device to you, if you
6 know?

7 A. Either Robert Mosley or Pam Arnold would go up to Bel Air
8 and pick it up. It wasn't every day, but if need be or she
9 thought she did a lot of recording, then they would go pick it
10 up and bring it to me for it to be downloaded by our electronic
11 people.

12 Q. Did you obtain anything useful from those recordings?

13 A. At times, yeah. I mean, they would -- she had a
14 conversation with Leshawn Miller, the delivery guy, about
15 trying to get things delivered and can't find the people and
16 couldn't find them last month, can't find them this month. And
17 for the most part -- I mean, other than that, it wasn't as
18 productive because I think because she kept the thing on all
19 the time, instead of being more selective on when to turn it
20 on.

21 Q. Did you use any of that in the final affidavit?

22 A. I didn't, no.

23 Q. Why not?

24 A. There just was nothing there that -- that we were hoping
25 to get in a conversation, so no.

1 Q. During this process of reviewing the record of the
2 investigation before you came on board, if you came upon
3 information or evidence that was inconsistent or contradictory
4 or seemed unreliable, what would you do?

5 A. My preference was always just handle it myself or become
6 actively involved in it. Or I would delegate it to somebody on
7 the team to do it. And if I didn't think they did a thorough
8 job, then I would say, "You need to get this question
9 answered."

10 But my preference always is just handle it myself so I
11 have that comfort that I know it's the way I wanted it to get
12 done to get clarified.

13 Q. As you were reviewing the reports of the investigation,
14 did you come upon an inconsistency that you wanted to get
15 clarified?

16 A. Yes.

17 Q. What was it?

18 A. Did Mr. Annappareddy tell Lisa Ridolfi not to do reversals
19 or not.

20 Q. Explain.

21 A. So I remember Pam Arnold was tasked with getting that
22 clarified. She handled that by texting Lisa Ridolfi, and Lisa
23 Ridolfi texting back that she was -- and so -- and that's not
24 the way I would have handled it. But that's -- and I was
25 unsatisfied with that, so I needed to get involved in that.

1 Q. And what did you do?

2 A. Well, the text back -- Lisa Ridolfi text back to Pam that,
3 no, Mr. Annappareddy did not tell her not to do reversals. So
4 I needed -- since Laurie Gutberlet was no longer at Medicaid, I
5 wanted to interview her, and I wanted to interview Lisa
6 Ridolfi, and I wanted to just hear it from both of them on
7 what -- what they recall.

8 Q. I'm showing you what is marked as Defense Exhibit 47. Can
9 you tell us what that is?

10 A. That would be my interview of Laurie Gutberlet by phone.

11 Q. And for what purpose?

12 A. It was for the purpose of a paragraph in the affidavit
13 that I wanted clarification on.

14 Q. Which paragraph is that? Is that the one you've been
15 talking about?

16 A. Yes. Do you want the paragraph number?

17 Q. That's okay. That's okay.

18 A. I can't recall.

19 Q. Did you also interview Lisa Ridolfi about this issue where
20 there was apparent inconsistency?

21 A. I did.

22 Q. I'm showing you what we've marked as Defense Exhibit 50,
23 which is in evidence. And can you tell us what that is?

24 A. That's my interview of Lisa Ridolfi. We actually went to
25 her home after she finished work, and we interviewed her.

1 Q. And I'm going to show you what you've got on Page 2 of
2 that report and ask you to read the highlighted section in that
3 top paragraph.

4 A. "She confirmed that these statements were true except for
5 the reference to her being personally told by Annappareddy.
6 She had no recollection of saying this to Gutberlet. She
7 recalled being constantly told by Jigar and Vipin that nothing
8 is ever to be reversed, per Annappareddy. She had also been
9 told by Jigar, Vipin, and Ami that she should not reverse
10 because Annappareddy did not allow it."

11 Q. What did she say about Chief Operating Officer
12 Ravi Korpelli?

13 A. She also advised that Pharmacare's chief operating
14 officer, Ravi Korpelli, for her not to worry about reversals
15 because it could get done on the weekends.

16 Q. Did this information that you've now gotten from Laurie
17 Gutberlet and from Lisa Ridolfi, did that resolve the
18 inconsistency in the reports that you had spotted?

19 A. I did, and I felt comfortable putting in the affidavit
20 what Lisa Ridolfi personally told me during this interview on
21 July 18th, 2013. And I see where Laurie was coming from, but I
22 don't think she totally asked the right questions about that
23 when Laurie interviewed her.

24 Q. During your own interview, did Ms. Ridolfi also tell you
25 more general information about what she knew about Pharmacare's

1 operation?

2 A. I mean, she did get into more information about other
3 things.

4 Q. What did you note about what she said about the billing
5 operation?

6 A. That they were still billing for high-dollar
7 prescriptions, and that Sindhura Motaparthi was there, at
8 Plumtree, now doing the billing.

9 Q. After this interview with Ms. Ridolfi, your own interview,
10 did you have any concerns about Lisa Ridolfi's reliability as a
11 witness?

12 A. I did not.

13 Q. Why not?

14 A. Because everything she said since 2012, it seemed that her
15 co-workers were corroborating what she was saying about
16 undelivered bags overflowing in bins, and then disappearing.
17 Billing and not filling. Co-workers like Caitlin Biemer
18 confronting Jigar and Vipin and saying, "You need to reverse,"
19 and then the reversals not being done. What Lisa had said, you
20 know, the Caitlin Biemer and the Candice Covahey and the
21 Dennis Tokofsky and -- like, it was almost -- it would be
22 almost like they're in the same room together and they're all
23 saying the same story, but they weren't. They were
24 individually interviewed, and they were saying the similar tune
25 in these separate interviews.

1 And so, to me, as someone who, at the time, was doing it
2 for over a quarter of a century, healthcare fraud, these people
3 were saying, "We're doing fraud here, it's happening here."
4 So, yeah, it was -- Lisa had credibility in my book because her
5 co-workers, and some of them were current or former employees,
6 were saying the same thing.

7 And then the Mary Sue Cramer, their compliance officer,
8 their compliance officer is saying what was going on there.
9 And this woman had auditing experience. She knew that things
10 should be reversed.

11 So Mary Sue Cramer, Candice Covahey, Caitlin Biemer,
12 Dennis Tokofsky, they were saying what Lisa was saying. So
13 yeah, Lisa had credibility, and I felt very comfortable putting
14 her in the affidavit. I did.

15 Q. Did you or the team also arrange for trash pulls from the
16 Pharmacare store?

17 A. Yes.

18 Q. Why?

19 A. The trash pulls were helpful. I like doing trash pulls
20 when I'm working on an affidavit just to see what we can get
21 out of the trash that can lead us to believe that there's
22 something going on there, billing fraud going on there. So it
23 kind of links the trash to the location that we want to search.
24 So trash pulls were also always on my list of things that --
25 investigative techniques that I like to do when I'm drafting an

1 affidavit.

2 Q. Did you also arrange for surveillance at Pharmacare?

3 A. Yes. And I participated in a couple of them.

4 Q. Why?

5 A. We wanted to show who's going in and out of what pharmacy
6 and possibly use that in the affidavit as well. It wasn't to
7 get anything related to billing fraud allegations. It was, can
8 we place certain people coming out of certain locations, and
9 that was just for the purpose of possibly putting that in the
10 affidavit as well.

11 Q. Did you?

12 A. We didn't put anything about surveillances, no. It
13 just -- and also, I like to go out to locations that are going
14 to be searched so that I can work on my attachment A, which is
15 the description of the property that's going to be searched.
16 So it helps me to go and take a picture of it and know what it
17 looks like so I can describe it.

18 Q. Okay. Did you also do mail covers?

19 A. I did. That's another thing I always do as a routine when
20 I draft affidavits, is do mail covers to show there's mailings
21 from insurance programs and things like that.

22 Q. What is mail covers?

23 A. Mail cover is when I send a letter to the United States
24 Postal Inspection Service and I ask them, before you deliver
25 the mail -- if it gets approved by them, before you deliver the

1 mail -- at the post office, they actually write down on a
2 sheet, handwritten, what mail they're about to deliver to a
3 location. It's usually at whatever post office supplies to the
4 area I want a mail cover on, the address. There's one person
5 that's going to handle that.

6 And then I usually get it a few months later. I'll get a
7 list, a bunch of sheets that say on this day, this was the mail
8 that was delivered at this address, and it will be a daily
9 sheet that will be stapled together. And then I have to
10 actually return those sheets when I write up my report because
11 the postal inspection service doesn't allow me to keep those
12 things. So they don't go in my case file. I have to actually
13 return them. They'll call you if you don't return them.

14 So that's it. Mail cover is just basically, can I tie in
15 some mail going to a certain address. So that's another thing
16 that I normally put into an affidavit. I didn't do it in this
17 case, but that's my normal investigative technique that I use
18 when I'm drafting an affidavit, just see what comes out of it.

19 Q. Did you sit down with Laurie Gutberlet to review
20 paragraphs of the affidavit as you were drafting it?

21 A. I did. Once I heard Laurie had given her two-week notice,
22 I insisted that her and I sit down, and we sat down for a few
23 days. And there was something shown to me called a brain dump,
24 an email. Jim Hagin didn't come into that meeting. It was
25 Laurie and I, sitting down with the laptop open. And we went

1 paragraph by paragraph, and she had her reports in front of
2 her. And we went through each one. I'm like, "Okay, what do
3 you think about this paragraph, what do you think about this
4 paragraph."

5 And it was just mainly her work, those paragraphs
6 pertained to her work. I just wanted to make sure that I got
7 everything right. My interpretation of her work was okay in
8 the affidavit. Since she was leaving, this was my last chance
9 to basically get her input. So . . .

10 Q. You mentioned that the affidavit progress included weekly
11 meetings with the investigative team --

12 A. Or more. Twice a week sometimes. It depended.

13 Q. Who had the final say over what went in the affidavit?

14 A. That would be me, but I am always open to discussion. But
15 if I didn't feel comfortable when someone said, "Why don't you
16 take that line out," if I didn't feel comfortable, I'd say "No,
17 it's going to stay in."

18 But when it comes to the final, final affidavit, it's
19 always our prosecutors, with their legal minds and also their
20 strategy, on what needs to stay in and what doesn't need to
21 stay in. Because we're only going to have it sealed for a
22 little bit, so there was also a concern, certain things maybe
23 shouldn't be in the affidavit and doesn't need to be in the
24 affidavit. So I did rely on their legal advice.

25 But in the end, if I wanted something in, it stayed in,

1 unless someone could give me a really good reason why.

2 So . . .

3 **MR. EISER:** Your Honor, if you need to give your staff
4 a break --

5 **THE COURT:** Yeah. We've been going almost two hours
6 exactly. We'll be in recess for 10-minutes.

7 **THE CLERK:** All rise. This Honorable Court is now in
8 (Whereupon, a recess was taken from a.m. to 3:56 p.m.)

9 **THE COURT:** Please continue.

10 **BY MR. EISER:**

11 **Q.** Ms. Lating, I'm showing you on the screen what's marked as
12 Plaintiff's Exhibit 70.

13 **A.** Yes.

14 **Q.** The cover page for your application for a search warrant
15 on July 23rd, 2013.

16 What does your signature on that affidavit -- or that
17 search warrant application mean to you? What is your
18 understanding of when you sign your name to a document like
19 this that that's going to be submitted to a court?

20 **A.** I'm swearing under oath that I have reason to believe that
21 on the premises of whatever location is on the application, I
22 have reason to believe that there's evidence related to a crime
23 that had been committed or is currently being committed or has
24 been committed in the past and it's still there.

25 So it's -- I'm basically putting my badge on the line.

1 And I'm raising my hand and telling the judge, I believe in
2 this, I believe what I've put in this affidavit. And I have
3 strong reason to believe that from what I put in the affidavit,
4 that I'm going to find evidence of a crime; in this case,
5 healthcare fraud, at this location.

6 **Q.** I was going to ask you about the locations. On Page 2,
7 you have the locations. In particular, you've got -- can you
8 tell us -- go ahead and read Paragraph 2 out loud, and tell us
9 the addresses that you've listed. What are those places?

10 **A.** Specifically, "This is an application for search warrants
11 for the residence of Reddy Vijay Annappareddy, hereafter
12 referred to as Annappareddy, located at 1504 Park Hill Court,
13 Fallston, Maryland. Hereafter referred to as target location
14 1; Pharmacare Plumtree Pharmacy located 208 Plumtree Road,
15 Suite A, Bel Air Road [sic] 21015, hereafter referred to as
16 target location 2; CareMerica LLC" --

17 **THE COURT:** Slow down.

18 **THE WITNESS:** Sorry, Your Honor.

19 "CareMerica LLC, located at 2227 Old Emmorton Road,
20 Suite 122, Bel Air, Maryland, 21015, hereafter referred to as
21 target location 3; Pharmacare LLC located at 2227 Old Emmorton
22 Road, Suite 120, Bel Air, Maryland 21015, hereafter referred to
23 as target location 4; and Pharmacare/CareMerica corporate
24 offices located at 2701 Washington Boulevard, 21230, hereafter
25 referred to as target location 5; and Pharmacare at Park

1 Heights Pharmacy located at 4212-4414, Park Heights, Avenue,
2 Baltimore, Maryland 21215, hereafter referred to as target
3 location number 6."

4 Q. What was your basis for believing you would find evidence
5 at those locations?

6 A. From interviews that Medicaid had done.

7 Q. In particular, what about those interviews made you think
8 you would find stuff at these locations?

9 A. From the information from her -- from Laurie Gutberlet's
10 interviews, I had reason to believe at that each location,
11 there's going to be something related to the Pharmacare
12 business and possibly the billing fraud activity that we
13 alleged was going on in this case.

14 Q. Okay. I'm showing you Page 4 of the affidavit with the
15 heading "Probable Cause." which has a number of paragraphs.

16 A. Yes.

17 Q. And I want to get into it, but I want to first ask, is
18 every assertion of fact in the probable cause section of the
19 affidavit backed up by a memo or report prepared by a member of
20 the investigation team?

21 A. Yes. Or discussions with my investigative team, yes.

22 Q. Now, if I were to point at a paragraph and ask you what
23 documentation backs up that assertion, would you be able to
24 recall it off the top of your head?

25 A. Some of the paragraphs, but no, not without my note, I

1 probably wouldn't be able to. I don't have it memorized.

2 Q. Have you gone back through your affidavit and prepared a
3 note for yourself to refresh your memory about the
4 documentation for each paragraph?

5 A. I did, actually, this long weekend. I took the Medicaid
6 reports and kind of went through, in preparation for this
7 testimony, what I did back in 2013, which is I took the
8 Medicaid reports, and I went paragraph by paragraph in the
9 final affidavit to identify what source did I use to do that
10 paragraph. And that was really helpful for me to refresh my
11 memory of what I did back in 2013.

12 Q. Okay. If I ask you a question about something, and you
13 need to refresh yourself, let me know.

14 A. Okay.

15 Q. I'm going to ask you to look at Page 6, Paragraph 10.
16 Where does that information come from?

17 A. It came from more than one source. And I don't --
18 Lisa Ridolfi and Dennis Tokofsky interview. But I don't
19 know -- I forget what dates of those interviews. But they're
20 from various reports that I read.

21 Q. Okay. Page 8, Paragraph 14. "Review of paid claims and
22 prescription drugs purchased by Pharmacare," where did this
23 information come from?

24 A. The whole section called "Review of Paid Claims" would
25 have been input from Robert Mosley. And that would be from a

1 team meeting where he would -- it was changing the numbers, but
2 14, 15, and 16 would have been his input to the affidavit.

3 Q. When you say "Mosley," do you mean the MEDIC team?

4 Because you described a group of people who were working with
5 MEDIC.

6 MR. GREENBERG: Objection. Leading.

7 THE COURT: Please rephrase the question.

8 BY MR. EISER:

9 Q. Who provided you, in addition to Agent Mosley, if anybody,
10 information about the MEDIC and the losses?

11 A. Well, I didn't have any direct contact, like, discussing
12 it with the MEDIC contractors, in the process of drafting this
13 thing.

14 Q. Okay.

15 A. Robert Mosley was my go-to of what are we going to put in
16 for the review of paid claims. So he would sometimes have
17 something in front of him that he would be reading off, and the
18 shortages changed over a period of time. But usually, during a
19 team meeting, he would tell me, like, "Change this, change
20 that." I don't recall ever getting an email from him. It was
21 mainly a discussion with the whole group of what are we going
22 to put in for the review of paid claims sections. That was his
23 input getting from the MEDIC contractor.

24 Q. When you say the shortages changed over time, was that a
25 difficult process that people were going through and trying to

1 determine how much the government lost as a result of the
2 alleged fraud?

3 A. Well, I wasn't part of those meetings. But when we had
4 team meetings and I'm like, "How are we doing on this section I
5 need for review of paid claims," it seemed like it was still a
6 work in progress, that they were still trying to -- to give me
7 final numbers to put in the affidavit. But those paragraphs
8 did change over time, during meetings, what to put and what
9 change in sentences and so forth.

10 Q. Page 11, Paragraph 18. "Sources of Information." It
11 states "regarding CS1." Who is that?

12 A. That would be Dennis Tokofsky.

13 Q. Can you read just the Paragraph 18 for us.

14 A. Sure. "Information from CS Number 1. MFCU began
15 investigating Annappareddy and Pharmacare based on a complaint
16 by a former Pharmacare employee to be referred to herein as
17 confidential source number one, CS1. Number one. CS Number 1
18 worked as a Pharmacare chief operating officer from August 2011
19 through April 2012. I reviewed the Medicaid MFCU prepared
20 interview reports of CS1 that took place on June 18th, 2012,
21 and August 23rd, 2012. On June 22nd, 2012, CS1 filed a *qui tam*
22 against Pharmacare and Annappareddy that is under seal."

23 Q. And where did this information come from?

24 A. This would have been from the interviews of Mr. Tokofsky,
25 I didn't use anything from the *qui tam*.

1 Q. Okay.

2 A. Except I made reference that there was a *qui tam* in the
3 last sentence of Paragraph 18.

4 Q. I want to go back for one second to Paragraph 14. We've
5 mentioned that there was the MEDIC team, and this was discussed
6 at the meetings. And your liaison was Robert Mosley, but, as
7 you discussed, there was a team of people working with MEDIC.

8 A. Yes.

9 Q. Have you ever worked with MEDIC before?

10 A. No. That's always Health and Human Services that deal
11 with the MEDIC people. I've had them on cases, doing their
12 expert opinion on claims analysis, but it's always Health and
13 Human Services that is their liaison with those contractors.

14 Q. You called them "the expert"?

15 A. They are experts.

16 Q. Why is that? What does that mean?

17 A. They are experts. They're supposed to be -- and each
18 contractor has a different expertise. This company that was
19 the MEDIC contract for this case was supposed to have the
20 pharmacy expertise to assist in this case. So each contractor
21 has a different expertise, and HHS knows who to reach out to
22 for a certain type of provider.

23 Q. In the meetings where the affidavit was discussed, did any
24 of the members of the MEDIC team ever give you reason to doubt
25 the reliability of the loss information they're getting from

1 MEDIC?

2 A. No, no.

3 Q. Did you have any reason to question or doubt the
4 information that you were getting from MEDIC that was relayed
5 to you from Agent Mosley?

6 A. No.

7 Q. Why not?

8 MR. GREENBERG: Your Honor, I'm going to object. This
9 is misstating the witness's testimony. She said that she had
10 no communications with MEDIC.

11 THE COURT: I'm sorry, I couldn't understand you. Say
12 it again, please.

13 MR. GREENBERG: I'm sorry, Your Honor. I'm going to
14 object to the last two questions. I mean, Government counsel
15 is mischaracterizing the witness's testimony. She testified
16 very clearly, multiple times, she had no communications with
17 MEDIC.

18 THE COURT: And you object to the last two questions
19 as leading?

20 MR. GREENBERG: Yes. Well, leading and I also just --

21 THE COURT: The question is: Did you have any reason
22 to question the MEDIC report? That's different from saying she
23 had no direct contact with MEDIC.

24 MR. GREENBERG: I thought I heard questions about
25 meeting or communications with MEDIC. Did I mishear?

1 **MR. EISER:** The prior question was: The MEDIC team of
2 investigators, did any of those agents or investigators raise
3 any question or doubts about the information provided?

4 **THE COURT:** I'll allow it for what it's worth. I
5 understand it's very limited. I'll overrule the objection.

6 Go ahead.

7 **BY MR. EISER:**

8 **Q.** Page 17, Paragraph 32, where does that information come
9 from?

10 **A.** From an interview with Ms. Ridolfi, Lisa Ridolfi.

11 **Q.** And you actually -- you've advised that you met with her
12 personally, correct?

13 **A.** A few times, yes.

14 **Q.** And found her to be reliable?

15 **A.** I did. I did.

16 **Q.** Page 25, Paragraph 44, what's the basis of that
17 information?

18 **A.** That would be the results of the Medicaid Fraud Unit's
19 undercover operation. And that would have been a paragraph
20 that I got assisted by Cathy Pascale and Pam Arnold on
21 drafting.

22 **Q.** When you signed the search warrant affidavit on July 23rd,
23 2013, did you believe you had a reasonable basis to believe
24 that Mr. Annappareddy may have been engaging in healthcare
25 fraud through his company Pharmacare?

1 A. Yes.

2 Q. Why?

3 A. Just from the interviews. But there's two situations, two
4 incidents, that I think, to me, as someone who's been doing it
5 for a quarter of a century, healthcare fraud, the New Year's
6 Eve billing that I saw, the volume, after-hours, Lisa Ridolfi
7 had shut down the pharmacy for the holiday. But when Lisa
8 Ridolfi videotaped undelivered bags in March and May of 2013
9 with a hidden camera that I gave her, and we saw the volume of
10 undelivered bags dated in 2012, that was -- to me, as a
11 healthcare fraud investigator, that was just eye opening that
12 it was -- because each one of those bags represents the federal
13 government paid for those drugs, and they're not delivered.
14 And they haven't been paid back -- the government hasn't been
15 paid back for those drugs. So, to me, that is clear evidence
16 of government fraud. And that was pretty overpowering, to see
17 the volume of undelivered bags.

18 Q. Ms. Lating, did you intentionally misstate any important
19 material facts in the affidavit that you signed July 23rd,
20 2013?

21 A. Absolutely not.

22 Q. Did you intentionally omit any exculpatory information
23 from the affidavit?

24 A. No.

25 Q. Did you omit any necessary information regarding the

1 reliability of the witnesses who had provided information about
2 the fraud?

3 A. No.

4 Q. Do you believe that any of the others on the investigative
5 team provided materially false information that was included in
6 the affidavit?

7 MR. GREENBERG: Objection. Her belief about what
8 other agents did, I'm not even sure how that could be
9 admissible.

10 MR. EISER: It's her state of mind.

11 THE COURT: It's her state of mind.

12 I agree.

13 Overruled.

14 THE WITNESS: I wouldn't have -- I wouldn't have swore
15 out the affidavit if I felt that I couldn't trust the
16 information that I got from my investigative team and from the
17 expert that was analyzing the paid claims.

18 BY MR. EISER:

19 Q. The information from the MEDIC experts is contained in
20 Paragraph 14 and 15 of the affidavit, and that's two paragraphs
21 in the 66-paragraph affidavit. If you remove those two
22 paragraphs and the information from the MEDIC experts, do you
23 believe you would still have had probable cause to go forward
24 with the affidavit?

25 MR. GREENBERG: Objection. Calls for a legal

1 conclusion. And there's extensive commentary in that purported
2 question.

3 **MR. EISER:** Counsel opened the door to this wide open,
4 asking this witness on direct several times about her
5 understanding about what is probable cause and her legal
6 understandings about this.

7 **MR. GREENBERG:** If he's going to be making these kinds
8 of comments, respectfully, I'd ask the witness to be excused.

9 **THE COURT:** I think his point is well taken. I think
10 the door was open. I would overrule the objection.

11 Go ahead.

12 **THE WITNESS:** Could you ask the question again,
13 please.

14 **BY MR. EISER:**

15 **Q.** Sure.

16 If you were to remove the two paragraphs in your
17 66-paragraph affidavit that referenced the information from the
18 MEDIC experts about losses, and you just remove those, do you
19 believe you would still have had probable cause to go forward
20 with the affidavit?

21 **A.** I believe it's three paragraphs, 14, 15, 16.

22 **Q.** Thank you.

23 **A.** Okay.

24 **Q.** Classic agent.

25 **A.** But we would still have it. And I can tell you that in my

1 career, I've done affidavits of fraud investigations, not
2 necessarily always healthcare fraud, but I've estimated the
3 amount of -- like, in an investment fraud scheme or something,
4 estimated how much I thought had been stolen from victim
5 investors.

6 So we could have put one paragraph, and we could have said
7 that we have reason to believe that it could be in the
8 millions, but that the analysis is still being worked on. You
9 don't have to have a monetary amount. You just have to have
10 reason to believe that -- and we did. We had undelivered bags,
11 bags that represented government money, that hadn't been
12 returned, and it's been over a year.

13 So I would have been very comfortable. But there was -- I
14 think, we wanted to put a monetary amount on this. And it
15 wasn't needed, but we -- I think, we relied on our experts to
16 tell us, yes, we have a figure that we can feel confident
17 about, and so that's why I put it in there. But I could have
18 done it without 14, 15, and 16, and just put one paragraph with
19 a sentence saying that the paid claim analysis is still a work
20 in progress. That would have been fine.

21 **Q.** Did you encounter any reason before submitting the
22 affidavit to suspect that Agent Mosley had manipulated,
23 altered, or in any way falsified the data used by MEDIC to
24 provide its estimate of losses?

25 **A.** No, absolutely not.

1 Q. Do you believe, based on your experience and knowledge of
2 Agent Mosley, and the operation of how this investigative team
3 worked, that Agent Mosley even had the capability to manipulate
4 or falsify the data used by MEDIC in such a way that nobody at
5 MEDIC or on your investigative team would have noticed?

6 A. No. His job was to give them, the MEDIC experts, what
7 they needed to do their analysis. He was the go-between, "What
8 do you need, I'll get it for you so you can complete your paid
9 claims analysis." So no.

10 And like I said, not only was he a colleague, he was a
11 friend for over 15 years. So no, no. It's totally out of
12 character for him. Totally.

13 Q. Did any of the members of the investigative team provide
14 any disagreement at any time with the conclusion that probable
15 cause existed at the time the affidavit was submitted?

16 A. No, no.

17 Q. How about now after you've heard or read
18 Mr. Annappareddy's allegations in his malicious prosecution
19 complaint against you and in Mr. Greenberg's examinations,
20 whether it be about Ms. Ridolfi's reliability or Tokofsky's
21 financial motivation, have you learned any reason to believe
22 those investigators had misstated or omitted any important
23 facts from their reports?

24 A. No.

25 Q. Or does anything you've heard from the Plaintiff in this

1 case -- and I know you've read the complaint.

2 A. Yes, I have.

3 Q. Does that give you any pause in your firm conviction that
4 you had probable cause in July of 2013?

5 A. Yes. We did have probable cause then, and as I review an
6 affidavit that's over 10 years old, it still stands that -- and
7 what we know from -- what we know from the trial, the affidavit
8 still represents that there's healthcare fraud in activity
9 going on in the Pharmacare business and CareMerica business.

10 Q. When did you retire?

11 A. September 30th, 2017.

12 Q. Did you retire because of this case?

13 A. No. No. I was offered a position in February 2017. A
14 position that I had been waiting. I was eligible to retire
15 over a year and a half --

16 **MR. GREENBERG:** Your Honor, I'm going to object to the
17 post indictment. I don't know how this is conceivably relevant
18 in the Court's ruling about post indictment evidence.

19 **THE COURT:** Well, it negates any inference that she
20 walked away from her job because of what happened here. So
21 I'll let it in for what it's worth.

22 Overruled.

23 **BY MR. EISER:**

24 Q. Were you finished?

25 A. February 2017, there was two openings in the money

1 laundrying unit for contractor positions, which they seek
2 experienced investigative agents. And I'd been waiting a while
3 for an opening because usually there's no openings. And I got
4 lucky, there was two openings. So I was offered an interview,
5 and they called me back within 10 minutes and they offered me
6 the position. So I accepted May 4th, 2017, a contractor
7 position, which I'm in right now. So . . .

8 **Q.** So you didn't retire because of this case, but it did
9 impact you personally, didn't it?

10 **A.** It did, yeah.

11 **Q.** To be accused of intentionally fabricating evidence in a
12 criminal prosecution. How did that impact you, personally?

13 **MR. GREENBERG:** Objection, relevance.

14 **THE COURT:** I'm going to sustain that objection. I
15 think that is going too far.

16 Sustained. Sustained.

17 **BY MR. EISER:**

18 **Q.** Did the Plaintiff's accusations lead to the investigation
19 of you and others?

20 **MR. GREENBERG:** Objection. Your Honor has ruled that
21 the OPR report is inadmissible --

22 **THE COURT:** I'll sustain that objection, also.

23 I ruled in the motion *in limine* to keep out the OPR
24 report, the written report. Now, it sounded like you were
25 going into that.

1 **MR. EISER:** I apologize, Your Honor.

2 **BY MR. EISER:**

3 **Q.** You testified on direct that you didn't know about the
4 performance warning that Ms. Ridolfi got; is that right?

5 **A.** Yes. The 2012 one. February 2012, I think it was. I
6 didn't know about that.

7 **Q.** If you had known she had gotten a performance warning for
8 letting employees leave early, would that have impacted your
9 conclusion regarding probable cause?

10 **MR. GREENBERG:** Objection, mischaracterizes the
11 question. She was asked about the performance warning.

12 **THE COURT:** Do you want to rephrase the question?

13 **BY MR. EISER:**

14 **Q.** If you knew that Ms. Ridolfi had received a performance
15 warning criticizing her for allowing employees to come in late,
16 would that have impacted your conclusion about probable cause?

17 **MR. GREENBERG:** Objection. That, again,
18 mischaracterizes testimony. She was asked about the
19 overflowing bins.

20 **THE COURT:** All right.

21 Wasn't it two separate incidents?

22 **MR. EISER:** Yes.

23 **THE COURT:** Well, ask about both; the bins and the
24 coming in late.

25 **MR. GREENBERG:** Well, there was the February 2012,

1 with overflowing bins of prescriptions. But that wasn't the
2 only issue. Then there was August 2012, which I don't think I
3 got into the specifics of.

4 **THE COURT:** Well, you're going to get a chance to have
5 the witness again, so you can go back into that.

6 I do think you need to ask about both episodes, though,
7 Mr. Eiser.

8 **BY MR. EISER:**

9 **Q.** If you read a performance warning complaining about
10 overflowing bins in the Plumtree store, would that have
11 surprised you?

12 **A.** Would it have surprised me? No.

13 **Q.** Did you know there were overflowing bins?

14 **A.** Yes.

15 **Q.** Did every witness that you talked to or read about talk
16 about the overflowing bins of undelivered medication?

17 **A.** Yes. It wouldn't have surprised me.

18 **Q.** So would having read that in a performance evaluation and
19 Mr. Annappareddy trying to blame Ms. Ridolfi for that
20 overflowing bin, would that have impacted your conclusion
21 regarding probable cause?

22 **MR. GREENBERG:** Objection, mischaracterizes the
23 performance warning, which wasn't written by Mr. Annappareddy,
24 it was written by, I think, Dennis Tokofsky.

25 **THE COURT:** Do you want to rephrase the question to

1 account for that?

2 **BY MR. EISER:**

3 **Q.** If you had -- well, that's interesting.

4 Mr. Tokofsky, he didn't sue Lisa Ridolfi for stealing
5 government money, did he?

6 **A.** Can we go back to that exhibit first?

7 **Q.** Let me ask you: Who did Tokofsky sue in his *qui tam*
8 complaint? Who did he say was stealing money?

9 **A.** Pharmacare, CareMerica.

10 **Q.** Was he blaming Lisa Ridolfi for it?

11 **A.** No, no.

12 **Q.** Who was he blaming?

13 **A.** Mr. Annappareddy.

14 **Q.** On direct, you were asked about one line from a transcript
15 of the hours and hours of recording from Ms. Ridolfi, and you
16 were asked "You never asked Ms. Ridolfi about, quote, 'hiding
17 prescriptions.'" Do you remember that testimony?

18 **A.** I did. Yeah, I do. I remember.

19 **Q.** Why didn't you ask her about it?

20 **A.** Because we know what happens -- I know what happens,
21 because I've read the reports of what happens, when you bring
22 attention that there's undelivered bags. Mr. Annappareddy
23 wanted his delivery employees to deliver, and even if it's
24 multiple bags of the same drug, force it on these people to
25 accept it. There's interviews to that effect.

1 Also, you know, the Caitlin Biemer and Candice Covahey,
2 talking about overflowing bins, and then all of a sudden they
3 disappear when you bring attention that there's overflowing
4 bins to Mr. Annappareddy. So hiding them meant -- from what I
5 read in the 2012 reports, hiding them from sight from him is
6 because they're going to walk out the door with the label still
7 on it, and they're going to be brought somewhere else. Because
8 that's what those interviews in 2012 would say, "We didn't know
9 where they went, but they just left the location."

10 So hiding them versus them walking out the door and not
11 being reversed and God knows where they're going. So that was
12 not hiding because she didn't want to reverse them. They
13 weren't hiding because Mr. Annappareddy is going to be mad.
14 He's mad because if he saw them, these are undelivered bags,
15 this is the evidence of the fraud hitting him right in the
16 face.

17 And we have delivery people that were interviewed saying,
18 "I couldn't find them last month, I couldn't find them two
19 months ago, but I have bags, multiple bags, I have to try to
20 find them this month." And when -- Lisa Ridolfi also
21 corroborated that when these delivery people were interviewed.
22 The same thing. The same drugs being billed. These people are
23 homeless, you can't find them. They don't want the drugs. But
24 you have multiple bags with the same -- over months, and
25 months, and months, not reversed.

1 So hiding them meant they're not going to walk out the
2 door and go to wherever. Like other people have reported to
3 Laurie Gutberlet in their interviews. "I don't know what
4 happened to them. One minute they're overflowing; the next
5 minute the bins are gone." Multiple interviews like that.

6 So no.

7 And I looked through the Medicaid reports, and it's just
8 one of those things that I knew what that meant. It didn't
9 mean she's hiding them because, "Oh my God, I don't want to
10 reverse them." She's hiding them because they're going to walk
11 out the door if he sees them.

12 **THE COURT:** Mr. Eiser, before you move on, I'm not
13 sure you got an answer to your question about what she knew
14 about the two negative performance reviews and what, if any,
15 effect that would have had on her opinion going forward. And I
16 think that might be important. I think you need to clear that
17 up.

18 **BY MR. EISER:**

19 **Q.** Let me clarify that. You didn't know anything about the
20 performance evaluations that Mr. Greenberg asked you about on
21 direct; is that right?

22 **A.** I knew of one, December 2012, where they demoted her to a
23 floater pharmacist. But I didn't know about the -- I believe
24 it's Shirish Patil email with the performance warning attached
25 to it. I wasn't aware of that. And that wouldn't have changed

1 my opinion of Lisa Ridolfi because there was enough people
2 corroborating what she was telling Laurie Gutberlet to still
3 give me confidence in her, that she was not to blame for the
4 overflowing bins.

5 Vipin Patel, Jigar Patel, Ami Patel, Sindhu Motaparthi,
6 they were filling them. They were billing, filling, or billing
7 and not filling. And she still -- even if I had seen that or
8 that was brought to my attention, I still would have believed
9 in Lisa Ridolfi. She had a lot to lose. She was about to lose
10 her job. She was a single mother with three kids. So no, I
11 believed her. Still do.

12 Q. You were shown a summary of the undercover activity, I
13 guess it was coordinated by Pam Arnold, at, I think, four
14 stores. Do you remember that?

15 A. It was more Laurie Gutberlet, but yes, okay.

16 Q. And you were shown that these undercover agents were
17 dropping off prescriptions and they were refilled and billed at
18 two of the stores, but not at two of the other stores. Do you
19 remember that?

20 A. Correct, correct.

21 Q. Does the fact that the -- does the fact that there was no
22 fraud in two of the stores in that undercover activity, is that
23 exculpatory?

24 A. No, no.

25 Q. We spent a lot of time on this issue of Tokofsky telling

1 Gutberlet he took no notes, but took note of some patients with
2 the undelivered medications. Do you remember that testimony?

3 A. Yes.

4 Q. And there was this testimony -- now, that information
5 was -- that meeting where Tokofsky said, "I didn't take notes,
6 but I can remember from some information from what I saw," that
7 meeting involved his new *qui tam* attorney. That meeting was
8 set up by his *qui tam* attorney; is that right?

9 A. Yes.

10 Q. Then the next day, as Plaintiff's counsel pointed out, a
11 detailed *qui tam* complaint was filed. Do you remember that
12 testimony?

13 A. Yes, yes.

14 Q. As you said, it's the lawyer that prepares the *qui tam*
15 complaint; is that right?

16 A. Right.

17 Q. Now, Tokofsky was still an employee at the time of that
18 meeting, at the time he filed the *qui tam*; is that right?

19 MR. GREENBERG: Objection, mischaracterizes the
20 evidence in the reports.

21 THE COURT: Do you want to stay with the question or
22 rephrase the question?

23 BY MR. EISER:

24 Q. Was he still an employee at the time he filed the *qui tam*?

25 A. My recollection he left in April of 2012.

1 Q. Is it possible that at the meeting, when he disclosed this
2 information, he could remember these undelivered prescriptions
3 that his lawyer told him, "Hey, go back in and see if you can
4 get this additional information for our *qui tam* complaint that
5 we're going to file tomorrow"?

6 MR. GREENBERG: Objection to the "is it possible what
7 he could have if his lawyer asked him." It calls for
8 speculation.

9 BY MR. EISER:

10 Q. Well, I won't ask is it possible.
11 Isn't it darn likely?

12 MR. GREENBERG: Objection, calls for speculation.

13 THE COURT: Well, I think the second aspect of the
14 question is appropriate.

15 Go ahead. The second version.

16 BY MR. EISER:

17 Q. Isn't it likely that he went back and got some additional
18 information?

19 A. At the time he filed the *qui tam*, my recollection he was
20 no longer an employee of Pharmacare. The way I interpreted him
21 not revealing any information, like prescription numbers, was
22 because he was about to file a *qui tam*. And if you're doing
23 that, you don't want to show your hand and show the good stuff.
24 You want to wait until you file your *qui tam*.

25 So him not giving -- in that interview less than 24 hours

1 before he's going to file a *qui tam*, he's not giving up what he
2 has for prescription numbers and patient names and fill dates
3 that were 2011 fill dates, I think that lawyer said, "Let's
4 hold back on the good stuff, the meat of why we're doing this
5 *qui tam*. Let's save it for when we file the *qui tam*."

6 That was just my impression of reading it. And so I
7 think -- that's how I interpreted it. So I don't think he went
8 back -- I think he already had the information. I don't think
9 we ever got that from him. But that was my impression of why
10 he held back in that initial interview, because they hadn't
11 filed the *qui tam* yet.

12 Q. Okay. On direct, you were asked whether you had ever
13 directed ICE to lift the hold that they had placed on the
14 Plaintiff's Green Card. Do you remember that testimony?

15 A. I do, yeah.

16 Q. Did you have any authority to impose or lift a stay or a
17 hold on a Green Card of an employee?

18 MR. GREENBERG: Objection, mischaracterizes the
19 testimony.

20 THE COURT: If she -- if she knows. I think it's a
21 fair question.

22 Go ahead.

23 THE WITNESS: No, I don't have the authority. And I
24 didn't hold up anybody getting a Green Card.

1 BY MR. EISER:

2 Q. Do you recall the Plaintiff's counsel telling you that
3 Plumtree wrote 450 prescriptions a day. Do you remember that?

4 MR. GREENBERG: Objection. Mischaracterizes the
5 question and testimony.

6 THE COURT: What was -- what would be a proper
7 characterization?

8 MR. EISER: Well, I wasn't telling her what happened,
9 I was asking her.

10 THE COURT: Just rephrase the question in that regard.

11 BY MR. EISER:

12 Q. Do you recall that testimony about 450 prescriptions
13 written a day by Pharmacare?

14 A. I responded 450. I believe he, Mr. Greenberg, was saying
15 600 to 900. My recollection was 450 prescriptions, and I think
16 it's in the affidavit as such.

17 Q. Okay. And then Mr. Greenberg said, okay, if you
18 multiplied 450 times seven, you get 3,000 prescriptions a week.
19 Do you remember that testimony?

20 A. Yes.

21 Q. And then for some reason, Mr. Greenberg asked you to
22 multiply 3,000 by 365, and you would get over a million, right?

23 A. Yes, I remember him doing that math, yes.

24 Q. But that's -- I mean, if you're -- if you do the math that
25 way, I mean, you're talking about 450 prescriptions a day. If

1 you take 365 days, that's something like 164,000. You wouldn't
2 multiply the number by seven and then by 365. You would
3 multiple the number by seven and then 52, right, if you're
4 trying to get some sort of estimate of the number of
5 prescriptions?

6 A. Right.

7 MR. GREENBERG: Objection to the speech. Is there a
8 question?

9 BY MR. EISER:

10 Q. The question is: Wasn't that deceptive of Mr. Greenberg
11 to do that sort of math?

12 MR. GREENBERG: Objection to the characterization.

13 THE COURT: Did that happen? I don't recall that
14 happening.

15 MR. GREENBERG: Your Honor, I think I probably -- I
16 think I actually did inadvertently misspeak, and that was not
17 my intent to be deceptive, obviously.

18 THE COURT: Well, you concede now it should be just
19 365 days times the number of pills, not again times seven.

20 MR. GREENBERG: Yeah. Yeah, that is correct. It
21 should have been whatever number of prescriptions per day,
22 times 365, yeah.

23 THE COURT: All right. With that concession, we can
24 move on then.

25 MR. EISER: Thank you, Your Honor.

1 **BY MR. EISER:**

2 **Q.** Do you recall the testimony about you not asking Lisa
3 Ridolfi to hold discovery logs out of Pharmacare to show to you
4 before you issued the search warrant affidavit?

5 **MR. GREENBERG:** Objection. There's no question about
6 hauling logs. Mischaracterizes the question and the testimony.

7 **BY MR. EISER:**

8 **Q.** Let me rephrase.

9 Why did you not ask Lisa Ridolfi to steal delivery logs
10 from Pharmacare while she was still an employee there?

11 **MR. GREENBERG:** Objection, mischaracterizes the
12 question and testimony. It was about copying, and Ms. Ridolfi
13 gave tons of other documents that I don't think Ms. Lating
14 would say -- anybody would say she stole from Pharmacare.

15 **THE COURT:** Do you want to rephrase to refer to it as
16 copying instead of stealing.

17 **MR. EISER:** Yes, Your Honor.

18 **BY MR. EISER:**

19 **Q.** Why did you not ask Ms. Ridolfi for the delivery logs?

20 **A.** Because the allegations were that they were billing,
21 either filling and not delivery. So what would we get from
22 delivery logs? So no, I don't know what we would have got from
23 that.

24 **Q.** Wasn't that something that you would be getting by filing
25 for a search warrant?

1 A. Correct. Correct.

2 Q. And you did get delivery logs as a result of the search
3 warrant; is that right?

4 A. We did. We did.

5 Q. And at Mr. Annappareddy's criminal trial, nobody used any
6 of that evidence; isn't that right?

7 MR. GREENBERG: Objection. Objection. Getting into
8 post-indictment activity. I don't think this is consistent
9 with Your Honor's ruling.

10 MR. EISER: No, this is post-indictment activity that
11 goes to the credibility of this --

12 THE COURT: Overruled. Overruled.

13 Go ahead.

14 BY MR. EISER:

15 Q. You were at the criminal trial, right?

16 A. Every day, yes.

17 Q. And did Mr. Annappareddy introduce any delivery logs to --
18 in defense of his case?

19 A. No. No.

20 Q. You were asked on adverse direct that you only put one
21 customer complaint in the affidavit. Do you remember that
22 testimony?

23 A. Yes.

24 Q. There were other customers that were complaining; isn't
25 that right?

1 A. Yes.

2 Q. Why did you not put additional customer complaints in the
3 affidavit?

4 A. Well, as Mr. Greenberg showed, I did want, like, five. It
5 was just one of those things that got edited, that we only
6 needed, like, one good example. So that's why it ended up that
7 way. But we did include the Hillendale Pharmacy ones to show
8 that they billed at Pharmacare, which prevented the customer at
9 Hillendale to get their prescription filled because it had
10 already been filled. So really, we had, like, four examples of
11 how Pharmacare's billing affected people that went to another
12 pharmacy.

13 MR. GREENBERG: I'm going to object to that testimony
14 Your Honor. She's relying on a report prepared over
15 five months after the interview of this competing pharmacist
16 about what he supposedly heard from three patients. It's
17 multiple levels of hearsay.

18 THE COURT: What's the response?

19 MR. EISER: She heard it. It's her state of mind
20 that's an issue.

21 THE COURT: All right. Overruled.

22 BY MR. EISER:

23 Q. Do you recall that process that Mr. Greenberg brought this
24 box of documents over to you, and that was --

25 MR. GREENBERG: Objection, to the use of the word

1 "process."

2 **THE COURT:** Overruled.

3 Go ahead.

4 I have no problem with the use of the word.

5 **BY MR. EISER:**

6 **Q.** Let me ask you about the trash run. Ms. Ridolfi told you,
7 "We had to pull some labels off some pill bottles, and they got
8 thrown away. You can pull those from the trash."

9 Do you remember that testimony?

10 **MR. GREENBERG:** Objection, mischaracterizes the
11 testimony.

12 **THE COURT:** In what respect?

13 **MR. GREENBERG:** He said Ms. Ridolfi told Ms. Lating,
14 and that's not what happened. Ms. Ridolfi told Pam Arnold.

15 **THE COURT:** All right. Do you want to rephrase the
16 question.

17 **BY MR. EISER:**

18 **Q.** How did you come to go to the trash at Pharmacare to pull
19 what we've been going through here this afternoon?

20 **A.** I got a call on June 20th, 2013, by Pam Arnold, saying,
21 "Can you get up to CareMerica tonight and get a bag out of the
22 dumpster at CareMerica." And Lakshmi Veerareddy had been
23 ripping off labels and not reversing and putting in the trash.
24 And one of the other employees was going to bring it over to
25 CareMerica dumpster. His first name was Kalpesh,

1 K-A-L-P-E-S-H. "So it's going to be in the dumpster." And so
2 I went that night, and I looked in the dumpster. And she had
3 told me that it was going to be marked "HIPAA" so that it would
4 be easily found in the dumpster. But I had to go through it a
5 little bit, the dumpster, to find it, but I did find it.

6 Q. Plaintiff's counsel showed you some prescription labels
7 that were still on their backings. Do you remember that?

8 A. Yes.

9 Q. And you pointed out that those had staples in them. What
10 did that mean to you?

11 A. What that means to me, and I saw it in videos and
12 photographs that Lisa Ridolfi would do, and I'm familiar with
13 working pharmacy cases, sometimes when a pharmacist puts
14 multiple drugs in a bag, what they do is, on the outside of the
15 bag, they put the labels, and they staple it on the outside of
16 the bag. And inside the bag will be, you know, three, four,
17 five, whatever, medications, just compacted into one bag. So
18 that represented to me that they took a label and stapled it on
19 the outside of the bag. And there was multiple ones connected,
20 which means they printed it out, and they put it on the outside
21 of the bag.

22 Q. Is that consistent with what Ms. Ridolfi had told
23 Pam Arnold?

24 A. Yes, yes.

25 Q. And did you also find --

1 **THE COURT:** Let me jump in here and make sure I
2 understand that.

3 You mean there could be instances where the label that
4 goes on the medicine bottle is not physically attached to the
5 bottle, but it's stapled to the bag the bottle came in?

6 **THE WITNESS:** No, Your Honor. When they bill for
7 pharmacy claim, there's a small label that goes on your bottle
8 or your blister pack or whatever you're getting for medication.
9 But then there's another label that you can put on the outside
10 of the bag.

11 **THE COURT:** Right.

12 **THE WITNESS:** So when I saw them connected, when I
13 went through the trash, that meant that they stayed connected,
14 and they stapled it to the outside of a bag. And then inside
15 that bag, to go to Bon Secours, was multiple drugs, just to
16 make it easier, to have it all in one bag for that person.

17 **THE COURT:** All right.

18 **THE WITNESS:** So the labels connected together, still
19 connected together and stapled, meant they put it on the
20 outside of the bag to represent what's inside there with the --
21 the prescription labels would be on the bottles, a smaller
22 version of the label.

23 **BY MR. EISER:**

24 **Q.** In that trash run, you also did find a good number of
25 labels that had been pulled off bottles; isn't that right?

1 **MR. GREENBERG:** Objection, mischaracterizes the
2 evidence. If he wants to show her the trash, we can go through
3 it.

4 **THE COURT:** When you say "a good number," what do you
5 mean by that?

6 **BY MR. EISER:**

7 **Q.** Did you find any that actually had been pulled off a
8 bottle?

9 **A.** Yes, yes.

10 **Q.** Do you know how many?

11 **A.** Not that many. Under five, I think. They're little --
12 you could see that they were torn, and they're really small.
13 And I saw them today, again today, but yes.

14 **Q.** And is that consistent with what Ms. Ridolfi told you you
15 would find?

16 **A.** Yes.

17 **Q.** Does the fact that Ms. Ridolfi asked a question about
18 being a whistleblower matter to you in terms of the reliability
19 of the evidence she had been providing?

20 **MR. GREENBERG:** Objection, whether it matters to her
21 right now, that's irrelevant.

22 **THE COURT:** Do you want to change the time sequence,
23 Mr. Eiser?

24 **MR. EISER:** Yes, Your Honor. Thank you.

25 **BY MR. EISER:**

1 Q. Let me ask you this: Do you remember that letter you
2 hadn't seen before, Mr. Greenberg showed it to you, the
3 handwritten letter by Lisa Ridolfi?

4 A. Yes.

5 Q. Do you remember who that was sent to?

6 A. Judge Sullivan.

7 Q. Okay. If you had seen -- Judge Sullivan, is he the one
8 who approved your search warrant affidavit?

9 A. Yes.

10 Q. So if you had seen that letter, and had wanted to include
11 it, that would have been so that you could have advised
12 Judge Sullivan about it; is that right?

13 A. I definitely would have put a sentence in there that I was
14 aware of a letter to Judge Sullivan. I probably would have had
15 a discussion with Judge Sullivan, as well. But I didn't see
16 that letter beforehand.

17 Q. But he did?

18 A. I have no idea. We didn't have a discussion about it when
19 I was swearing out the affidavit.

20 Q. It was addressed to him, to Judge Sullivan?

21 A. Yes, it was.

22 MR. EISER: Your Honor, I only have a couple of other
23 questions. And I'm going to ask about two documents that were
24 created post indictment, but both address the issues in this
25 case that -- and this would probably be properly characterized

1 as part of our defense case, but you advised us at pretrial
2 that --

3 **THE COURT:** Right. Go ahead. Go ahead.

4 **MR. GREENBERG:** Well, I think we need to have a
5 discussion without the witness about what these are before --

6 **THE COURT:** All right.

7 Please step out.

8 **THE WITNESS:** Yes, Your Honor.

9 (Witness exits.)

10 **THE COURT:** Stop the clock.

11 **MR. FLOWERS:** Your Honor, this might be a good time
12 for me to step out so I don't interrupt.

13 **THE COURT:** Yes. Certainly. Go ahead.

14 **MR. FLOWERS:** Thank you.

15 **THE COURT:** All right. What are we looking at here?

16 **MR. EISER:** Two issues. I'm going to ask her, first,
17 if she had seen this report by Agent Mosley, indicating from
18 Mr. Walker that Mr. Annappareddy knew of the investigation as
19 of the summer of 2012, so two months before August 30th would
20 be June 30th, 2012.

21 **THE COURT:** What's the objection to it?

22 **MR. GREENBERG:** I mean, the objection is that this was
23 information that was obtained in late January of 2014. That's,
24 like, half a year after July 23rd, 2013. It's irrelevant to
25 the state of mind of Lating and Mosley as of July 23rd, 2013.

1 It also seems inconsistent with this Court's statement --
2 I'm trying to find the order --

3 **THE COURT:** What am I missing here? This just says
4 it's possible that Mr. Annappareddy knew about the
5 investigation at a certain time. Who does that help here?

6 **MR. GREENBERG:** Well, so this is a post-indictment
7 interview, so by necessity, the agents didn't have the
8 information --

9 **THE COURT:** I guess I should be asking Mr. Eiser this.
10 What does this prove, Mr. Eiser? That sometime along
11 here, Mr. Annappareddy knew about the investigation. How would
12 that affect the witness's probable cause analysis?

13 **MR. EISER:** It doesn't. It would, in fact --
14 Mr. Annappareddy is saying, "They didn't catch me on the
15 recording; and therefore, I'm innocent."

16 But anything -- and also, these efforts in late 2012 to
17 start saying, "Hey, Lisa Ridolfi, you should be doing something
18 about all of these overflowing bins, that's your fault."
19 That's because he knew what was coming.

20 **MR. GREENBERG:** Your Honor, this Court's order,
21 ECF-338, denying the Government's motion *in limine* to admit the
22 OPR, states, quote, "The issues left to be determined at trial
23 include the probable cause and malice elements of the malicious
24 prosecution claims in Counts 21 and 22 of the amended
25 complaint. Consequently, the evidentiary focus has been

1 narrowed to that information known to investigative agents
2 prior to criminal indictment and trial."

3 I would also note that, in addition to violating this
4 Court's order, this report are -- the commentary, I mean, I
5 think initially, counsel admitted it's not relevant and said it
6 doesn't, in response to Your Honor's question. And then
7 proceeded to refer to somehow Mr. Annappareddy blaming
8 Lisa Ridolfi after owning the investigation, but he's -- this
9 report, from way after the indictment, purportedly says that he
10 learned about it -- does it even say a time frame? Oh yeah,
11 end of August 2012. Lisa Ridolfi got a performance warning
12 about overflowing bins in February 2012, more than six months
13 earlier, in mid-February. So I don't even understand the
14 logic.

15 **THE COURT:** All right. What's the response?

16 **MR. EISER:** We just heard it again. He's saying that
17 Ms. Ridolfi, he wants to say, "I didn't have anything to do
18 with it, Ms. Ridolfi had everything to do with it." But that's
19 not consistent with -- or at least it's impeached. Or the
20 credibility of his behavior in the last half of 2012 with
21 performance evaluations and whatever they're going to make
22 about the recordings, it's really central to that. It
23 responds -- it rebuts their defense that this was Ridolfi's
24 fault.

25 **THE COURT:** Mr. Greenberg, the part you quoted from my

1 order on the OPR report, I didn't mean to limit -- I didn't
2 mean that to be a definitive statement of what the evidence was
3 going to be in this case. I think you're reading too much into
4 that.

5 We thoroughly discussed whether the Government could bring
6 in what I call after-acquired evidence, inculpatory evidence
7 that turned up as the case moved along post indictment. We all
8 agreed that would not come in to show probable cause,
9 obviously. But it may come in on damages or causation. And so
10 I don't think we draw a line at the date of the affidavit for
11 the warrant, necessarily.

12 **MR. GREENBERG:** Well, respectfully, Your Honor, it's
13 true the parties agreed and Your Honor agreed that it comes --
14 it's relevant to damages, after-acquired evidence. But we
15 certainly never agreed to that coming in post indictment. And
16 I'm not aware of any order entered by the Court that makes
17 clear that that's allowed, the so-called causation issue. And
18 I know Your Honor made some statements about it at the pretrial
19 conference, but it was not clear to me, certainly, especially
20 after reading this order denying the Government's motion *in*
21 *limine* about the OPR report that this is still in play.

22 **THE COURT:** Let's do this. It's late in the day.
23 Let's go ahead and mark this as an exhibit. Because even if I
24 sustain your objection, I have to let the losing side make an
25 offer of proof, so this is going to come into the record

1 anyway. Let's go ahead mark it as an exhibit. And we'll just
2 leave its admissibility unresolved. Let me look at my notes,
3 and let me have time to reflect on this before we decide
4 whether I'm going to consider it in making my decision.

5 **MR. EISER:** This has been marked. It's Defense
6 Exhibit 59.

7 **THE COURT:** All right.

8 **MR. GREENBERG:** Your Honor, can we also, respectfully,
9 defer any questions about this until Your Honor rules on that
10 issue?

11 **THE COURT:** No. I don't think that's a good idea. I
12 mean, what do you want to ask about this? Doesn't it speak for
13 itself?

14 **MR. EISER:** That's it.

15 **THE COURT:** So he's not going to ask any questions
16 about it.

17 **MR. GREENBERG:** Well, so --

18 **THE COURT:** He's not going to ask any questions about
19 it. It's marked as an exhibit. I'm not going to go read it.
20 It's just in the record.

21 **MR. EISER:** I'm going to ask her what's her -- you
22 know, how that would impact her view of this argument that --
23 you know, that was all Lisa Ridolfi's fault, these personnel
24 evaluations that came in at the end of 2012, the argument that
25 they'll make that he was never caught on any of these

1 recordings, well, of course he's not.

2 **MR. GREENBERG:** Your Honor, I need to correct the
3 record on something. Counsel keeps saying the performance
4 evaluations were after August 30, 2012. That's inaccurate.
5 The first was February 16, 2012; the second was August 27,
6 2012. So even if it's after-acquired six months after the
7 indictment evidence were admissible, and it's not, it has
8 nothing to do with the earlier two performance warnings for
9 Ms. Ridolfi.

10 **THE COURT:** All right.

11 **MR. GREENBERG:** It's irrelevant.

12 **THE COURT:** I'm going to hold this under advisement.
13 The exhibit is marked as exhibit only. Let's not ask any
14 questions about it.

15 You have one more document?

16 **MR. EISER:** One more.

17 **THE COURT:** I'm going to think this over tonight, and
18 we'll rule on it tomorrow morning.

19 Let's go ahead and do this so we can move forward and try
20 to go to 5:30 with getting in testimony.

21 **MR. EISER:** I would ask about Defense Exhibit 71.
22 Because the Plaintiff has submitted an expert damages report by
23 an expert who alleges some 30-million dollars' worth of damages
24 that that's what the value of Pharmacare was. And as
25 additional basis for his opinion, in his report is the term

1 sheet, the fact that there was some preliminary discussions
2 with a company called NVP and one of its executives named Ryan
3 Harris. That's already in evidence because of -- we admitted
4 that report.

5 Agent Lating interviewed Mr. Harris, and he said, as
6 you'll see in the report, "I didn't -- I didn't trust him. I
7 wasn't going to be getting involved" --

8 **THE COURT:** All right. We'll take these two exhibits
9 under advisement, and we'll rule on this tomorrow morning.

10 **MR. EISER:** Thank you, Your Honor.

11 **MR. GREENBERG:** Thank you, Your Honor.

12 **THE COURT:** Can we bring the witness back and go into
13 some other matters now?

14 **MR. EISER:** These are the only two matters I have.

15 **THE COURT:** You're finished with her?

16 **MR. EISER:** Yeah -- let me check.

17 **THE COURT:** All right.

18 Start the clock.

19 **BY MR. EISER:**

20 **Q.** Ms. Lating, I'm showing you what we've marked as Defense
21 Exhibit 59.

22 **MR. GREENBERG:** Wait. Your Honor just ruled that
23 there can't be any questions.

24 **THE COURT:** No questions on these two documents. Move
25 on to other matters.

1 **MR. EISER:** Okay. I'm -- when you say there's no
2 questions, I'm not sure how these exhibits get into evidence.

3 **THE COURT:** They're just marked for identification
4 only. They have not been admitted. We have an objection. I'm
5 going to take them under advisement and look at them tonight
6 and look at my earlier rulings from the pretrial conference on
7 what I call after-acquired evidence.

8 **MR. EISER:** That's all I have, then, just these two
9 things.

10 **THE COURT:** All right.
11 Do you have some additional questions, Mr. Greenberg?

12 **MR. GREENBERG:** I do, Your Honor. If we could take a
13 three- to five-minute break. I want to confer quickly.

14 **THE COURT:** Let's take a 10-minute break. Let's go
15 ahead and get paper copies of these two disputed exhibits for
16 the break.

17 We'll be in recess for 10-minutes.

18 (Whereupon, a recess was taken from 5:00 p.m. to 5:11
19 p.m.)

20 **THE COURT:** The two disputed exhibits will be taken
21 under advisement overnight. We've ordered a transcript of my
22 pretrial conference so we can finalize what we said about what
23 I call after-acquired evidence at that conference, and we'll
24 rule on those tomorrow.

25 With that, let's put the witness back up and finish with

1 any additional testimony by the Plaintiff's attorney.

2 **MR. GREENBERG:** Your Honor, just before we start, are
3 we going to go past 5:30?

4 **THE COURT:** We may go a little bit past because we
5 lost a little bit time. If you don't mind.

6 **MR. GREENBERG:** No, I don't mind, Your Honor.

7 - - -

8 **RECROSS-EXAMINATION**

9 - - -

10 **BY MR. GREENBERG:**

11 **Q.** Ms. Lating, you testified that you didn't have authority
12 to put a hold on an immigration application, right?

13 **A.** I did not -- I don't have the authority; yes, that's
14 correct.

15 **Q.** Even though you're an FBI special agent, you don't have
16 authority, right; that's your testimony?

17 **A.** Right. I don't have the authority.

18 **Q.** But you were certainly able to pick up the phone and call
19 immigration officials and let them know what happened in the
20 case, right?

21 **A.** Are you saying did I do that? Is there a question there?

22 **Q.** Yes. You had the ability to communicate information,
23 including about the favorable termination of this case, to
24 immigration officials, didn't you?

25 **A.** Could I have? Yes.

1 Q. And you didn't, did you?

2 A. I did not.

3 Q. You testified that you prepared notes over the weekend on
4 reports by, I guess, Laurie Gutberlet, maybe others?

5 MR. GREENBERG: Your Honor, we would ask that those
6 notes be produced and that we have the opportunity to review
7 them.

8 THE COURT: I'm sorry, she reviewed notes that you
9 want to look at?

10 MR. GREENBERG: She created notes.

11 MR. EISER: I'm happy to put them into evidence. She
12 created them in case we asked questions about the affidavit
13 where she couldn't recall.

14 THE COURT: The rule says if a witness uses notes to
15 refresh their memory before or while testifying, opposing
16 counsel has a right to look at them, and, in certain
17 situations, introduce them into evidence. That's kind of rare.
18 But you can look at them.

19 MR. EISER: That's fine, Your Honor.

20 MR. GREENBERG: Well, it's a little difficult to do
21 the examination without those notes. But we will do what we
22 can. We would like to get those notes by the end of today, if
23 possible.

24 MR. EISER: Do you want us to mark it?

25 THE COURT: Yes.

1 **MR. GREENBERG:** For identification only.

2 **THE COURT:** Mark it for identification only. Do you
3 have the notes ready right now?

4 **MR. EISER:** I do.

5 **THE COURT:** How many pages do we have?

6 **MR. EISER:** Four.

7 **MR. GREENBERG:** Ms. Lating --

8 **THE COURT:** Hold on. Let's go ahead and put an
9 exhibit number on it.

10 What's the next, exhibit number?

11 **MR. EISER:** Ninety-six.

12 **THE COURT:** All right. 96 for identification only,
13 Ms. Lating's notes. A copy has been furnished to plaintiff's
14 counsel, pursuant to the rule.

15 **BY MR. GREENBERG:**

16 **Q.** Ms. Lating, you don't have a attorney-client relationship
17 with Mr. Eiser, do you?

18 **A.** No.

19 **Q.** You don't have an attorney-client relationship with
20 anybody working with the Government, do you?

21 **MR. PHELPS:** Your Honor, Mr. Eiser is walking around.
22 We have asserted attorney-client privilege over all
23 communications with Agent Lating. She was an employee of the
24 United States at all times, and we represent the United
25 States --

1 **THE COURT:** Stop the clock.

2 **MR. GREENBERG:** I think we also need to have the
3 witness leave for this.

4 **THE COURT:** So the Government is asserting
5 attorney-client privilege here?

6 **MR. PHELPS:** She's not our client, Your Honor. The
7 United States is our client. But she was, at all times
8 relevant to this case, an employee of the United States, so we
9 can have privileged communications with her.

10 **THE COURT:** Well, these are notes she prepared.
11 That's not communication with an attorney.

12 **MR. GREENBERG:** Well --

13 **THE COURT:** I'm agreeing with you, Mr. Greenberg. You
14 can't ask about communications with the attorney. You can ask
15 her about the notes, pursuant to the rule.

16 **MR. GREENBERG:** Well, Your Honor, I'm respectfully,
17 and I would -- I don't know that we should do this in front of
18 the witness, but we can, if Your Honor would prefer. I need
19 some time. Ms. Lating has a private law firm representing her.
20 There is no attorney-client relationship here.

21 **MR. PHELPS:** Your Honor, our client is The United
22 States. That doesn't preclude us from having privileged
23 communications with Ms. Lating.

24 **THE COURT:** All right. I don't think counsel's asking
25 about a communication with any lawyer, a government lawyer or a

1 privately retained lawyer. You can ask her about her notes. I
2 thought that's where we were going, and we suddenly turned in a
3 different direction.

4 **MR. GREENBERG:** Yes, Your Honor, because -- All right.
5 If Your Honor doesn't think it's appropriate, I'll move on.

6 **THE COURT:** All right. You can ask her about notes,
7 because she prepared the notes. There's nothing
8 attorney-client about that.

9 **MR. GREENBERG:** Well, we just got them, and it looks
10 like they're fairly detailed. So I'm going to have to -- is
11 this the time --

12 **THE COURT:** He said it's four pages.

13 **THE CLERK:** Mr. Greenberg, the clock that is running
14 is just the clock that is for the entire time that we're
15 sitting here in trial. It's not for your time.

16 **MR. GREENBERG:** Thank you for clarifying that.

17 Let's sort of come back to the notes. I think we're
18 going, unfortunately, to have to resume this in the morning,
19 unless we stay really late.

20 **BY MR. GREENBERG:**

21 **Q.** Now, Ms. Lating, there are awards given to FBI special
22 agents for certain things, right?

23 **A.** Yes.

24 **Q.** You don't get an award for saying, "Hey, let's stop this
25 investigation," right?

1 A. You don't get awarded for stopping an investigation.

2 What -- I'm not sure what --

3 Q. The answer's "correct," right?

4 A. Right.

5 Q. And so you knew if you said, "Let's stop this
6 investigation, there's a problem," no award, right? No chance
7 of an award?

8 A. Is this a question applying to this case?

9 Q. Ms. Lating, it's a simple question. You knew as a -- when
10 you worked on this case in 2013, you knew you had no chance of
11 getting an award if you said, "There's a problem here, let's
12 stop the investigation," right? "Yes" or "no" question.

13 A. I don't work a case to get an award.

14 Q. That's not the question.

15 A. Okay.

16 Q. You knew that if you said, "Let's stop the investigation,
17 there's a problem," there's no chance of getting an award,
18 right?

19 THE COURT: I think that's self-evident. I can accept
20 that.

21 MR. GREENBERG: All right. Okay.

22 BY MR. GREENBERG:

23 Q. And you said that Special Agent Mosley would not mislead
24 you because that's not who he is, or something to that effect,
25 right?

1 A. He's my friend, as well as a colleague. And no.

2 Q. Yeah, but he's actually not your friend anymore, is he?

3 A. He was at the time.

4 Q. But ever since March 11, 2015, you haven't spoken to him,
5 have you?

6 MR. EISER: Objection. We're well beyond the
7 indictment and the search warrant affidavit.

8 MR. GREENBERG: She's opened the door to this. I'm
9 impeaching her.

10 THE COURT: If she's had a falling out with him after
11 this case was tried, why is that relevant here this afternoon?
12 What's the relevance?

13 MR. GREENBERG: The relevance is that she's testified
14 as a character witness, effectively, for Special Agent Mosley.

15 THE COURT: Right.

16 MR. GREENBERG: And she -- there's evidence that
17 because of the document destruction what Mosley did and didn't
18 do, she's no longer talks to him.

19 THE COURT: Let me -- the testimony you gave earlier
20 about these other investigators, is that true and correct as of
21 today, that's your opinion as of today?

22 THE WITNESS: Yes, pre--

23 THE COURT: The episode that occurred when the boxes
24 were destroyed might have upset you or concerned you about how
25 it was handled, but did that affect your ability of the

1 professional abilities during the relevant time period in this
2 case?

3 **THE WITNESS:** No, Your Honor. I trusted them.

4 **THE COURT:** I'm going to sustain an objection to any
5 post-destruction animosity between the government agents.

6 **MR. GREENBERG:** All right.

7 **BY MR. GREENBERG:**

8 **Q.** Ms. Lating, you testified that delivery logs that were
9 destroyed made no difference because Mr. Annappareddy's then
10 counsel didn't use them at the trial, right? Something to that
11 effect?

12 **A.** The delivery logs that were destroyed.

13 **Q.** You testified, I believe -- maybe I'm -- tell me if I
14 misheard it.

15 You testified something to the effect that the delivery
16 logs weren't used by Mr. Annappareddy's trial counsel, right?

17 **A.** Can I answer about these delivery logs?

18 **Q.** Well, you gave, like, a one-sentence answer to Government
19 counsel. What was the answer on that issue? I may have
20 misheard.

21 **A.** The delivery logs that were destroyed on March 11th, 2015,
22 I want to make it clear, they were not seized during any search
23 warrant on July 25th, 2013. They were acquired at Washington
24 Boulevard, which became a dumping zone of documents,
25 prescriptions from all of the pharmacy locations. So what was

1 destroyed was not from the search warrants that we executed.
2 So no, to answer your question. No, they weren't used by
3 prosecution or the defense in the trial.

4 Q. Now, Special Agent Lating, that's actually incorrect. On
5 the FBI evidence form, some of those documents were seized on
6 7/25/13 and have your name on them; do you know that?

7 A. The delivery logs were from Washington Boulevard --

8 Q. Ma'am --

9 A. Okay.

10 Q. Are you disputing that?

11 A. That's not my recollection, no.

12 Q. So Government counsel said, you know, you were in the
13 courtroom during the trial and the delivery signature logs
14 weren't used, right? Do you remember that?

15 A. Yes.

16 Q. You were also in the courtroom on September 1st, 2016,
17 weren't you?

18 A. I was.

19 Q. And your face went ashen white when Judge Russell ruled
20 the case was dismissed with prejudice, in part, because of the
21 destruction of those documents, and Judge Russell expressly
22 found that it didn't matter that the documents had been used
23 before because trial counsel didn't do a whole lot of things
24 the new counsel did, right?

25 MR. EISER: Objection. Argumentative. Counsel is

1 testifying with a compound.

2 **THE COURT:** I'm aware of all of that. I read
3 Judge Russell's order. I read the transcript.

4 **MR. GREENBERG:** Yes. I'm just pointing out that the
5 testimony about --

6 **THE COURT:** You moved from talking about whether the
7 delivery logs were used by counsel at trial to what happened to
8 her when the judge dismissed the charges. Those are two
9 different subject matters. I couldn't follow where you were
10 going with that.

11 **MR. GREENBERG:** Let me try to clarify. I'm sorry,
12 Your Honor.

13 **BY MR. GREENBERG:**

14 **Q.** So I understood Ms. Lating to be suggesting that the logs
15 weren't important because they weren't used by
16 Mr. Annappareddy's trial counsel.

17 And my question for you, Ms. Lating, is you were asked
18 whether you were in the courtroom during the trial, in the
19 criminal case, right?

20 **A.** Yes.

21 **Q.** You were also in the courtroom on September 1st, 2016,
22 right?

23 **A.** Yes.

24 **Q.** And you were there and you heard when Judge Russell found
25 that those destroyed documents had unique exculpatory value,

1 right?

2 A. Yes, I recall.

3 Q. And you were there when Judge Russell found that it didn't
4 matter that they weren't used during the trial because trial
5 counsel didn't do a whole lot of things that new counsel did,
6 right?

7 MR. EISER: Objection.

8 THE COURT: Overruled.

9 THE WITNESS: I don't recall that last part about
10 counsel didn't do what -- but I do remember the other part of
11 that sentence. The last part about counsel didn't do what they
12 were supposed to do, I don't recall that.

13 THE COURT: Mr. Greenberg, I'm still not following.
14 You started this line of questioning by suggesting to this
15 witness that she had misspoken when she said those logs were
16 not used at trial. Then you turned that into what the judge
17 did, dismissing the case, which still doesn't answer the
18 question of whether the logs were used at trial. You imply
19 that because of what Judge Russell did, she misstated a fact
20 here. Unless I'm missing something.

21 MR. GREENBERG: Well, there are two separate things
22 Your Honor. First, Ms. Lating testified that all the destroyed
23 logs for the years 2011, 2012, that none of those logs were
24 seized on July 25th, 2013. That's false, and we can show you
25 the document. I mean, it's --

1 **THE COURT:** So do you want to ask her about that?

2 **MR. GREENBERG:** At this point, I'll probably have to
3 ask her about that in the morning.

4 **THE COURT:** Looks like we're going to be into the
5 morning, anyway. We'll come back to that in the morning, then.

6 **MR. GREENBERG:** But it's an important issue. What I
7 was trying to explain, Your Honor, and I apologize, maybe I'm
8 just not doing a good job of it. It's late in the day, but
9 that's no excuse.

10 What I'm trying to explain is that defense counsel
11 elicited a statement from Ms. Lating. She was in the courtroom
12 during the trial in the criminal case, and the signature logs
13 weren't used by trial counsel for Mr. Annappareddy. And all
14 I'm trying to point out, Your Honor, is that Judge Russell
15 addressed that argument about the government on September 1st,
16 2016. Ms. Lating was also in the courtroom then. And
17 Judge Russell ruled that it didn't matter that the logs --

18 **THE COURT:** I know, he said it didn't matter. He
19 didn't make a finding one way or the other. I understand that.
20 He said it didn't matter, "I'm going to dismiss the case
21 because of the destruction." It didn't matter whether they
22 were used by counsel.

23 Now, that does not negate what she said, that nobody used
24 them at trial.

25 **MR. GREENBERG:** I think we can move on.

1 **THE COURT:** All right.

2 **BY MR. GREENBERG:**

3 **Q.** So, Ms. Lating, you testified that you've never had a
4 warrant suppressed, right?

5 **A.** I have not had a warrant suppressed.

6 **Q.** And you understand that it is very rare for someone to
7 have as much information about what the agents knew before
8 applying for a warrant, as Mr. Annappareddy has today, right?

9 **A.** I'm sorry, you've got to rephrase the question. I don't
10 understand it.

11 **Q.** Sure.

12 You know in a criminal case, you don't get the kind of
13 discovery you get in civil cases, right?

14 **A.** Yes, you do. Pretrial, you do. You get discovery.

15 **Q.** Your understanding is that discovery in a criminal case is
16 as broad as in a civil case?

17 **MR. EISER:** Objection, relevance.

18 **THE COURT:** Overruled.

19 **THE WITNESS:** I -- I don't know the difference, I'm
20 sorry. I can't comment on that.

21 **BY MR. GREENBERG:**

22 **Q.** Okay. And because you can't comment on that, you don't
23 know whether Mr. Annappareddy's situation now, with all of the
24 information he's gotten in civil discovery, is comparable to
25 your criminal cases where you said you never had a warrant

1 suppressed, do you?

2 A. I can't speak on civil discovery.

3 Q. So the answer is you don't know --

4 A. I don't know.

5 Q. -- if it's comparable?

6 A. I don't know.

7 Q. All right.

8 You mentioned that you and Special Agent Mosley had a case
9 with Sandra Wilkinson before, right?

10 A. Yes.

11 Q. What kind of case was that?

12 A. I don't remember his name. He posed as a physical
13 therapist, but he wasn't a trained --

14 Q. I just want to know what kind of crime it was.

15 A. It was a healthcare fraud.

16 Q. Healthcare fraud. Okay.

17 And that case, did that result in a conviction?

18 A. It did. He pled guilty.

19 Q. All right. We can just move on.

20 The Google emails, we talked about -- you were asked some
21 questions about that in your last exam. You knew that Dennis
22 Tokofsky deleted all of his emails before he left Pharmacare or
23 when he left Pharmacare, right?

24 A. I did not know that. I don't know that to be the truth.

25 Q. So that's not the reason why his name is not included in

1 the Google search warrant affidavit?

2 A. I don't know anything about deleting emails.

3 Q. Okay. You talked about the prosecutors being involved
4 with the affidavit, right?

5 A. Yes.

6 Q. Sandra Wilkinson was not present for most of the
7 interviews the agents did before July of 20 -- 2013, was she?

8 A. Before July 2013?

9 Q. Correct.

10 A. She was not present -- yes, that's fair.

11 Q. And the same is true of Catherine Pascale, right?

12 A. She -- the one I was involved in, she was on the call
13 with --

14 Q. Ma'am, I'm asking for most --

15 A. You want to say most, yes. Cathy -- Catherine Pascale was
16 not participating in most of the interviews pre-search warrant,
17 correct.

18 Q. And so neither one of the prosecutors have any way of
19 knowing if an agent declined to write something down that was
20 important, right?

21 A. That -- yeah, that would be true. That would be true.

22 Q. All right. We're going to cover your notes, I guess, in
23 the morning. We'll skip past that for now.

24 You mentioned the New Year's Eve billings, and you said
25 that was somehow persuasive evidence of fraud to you?

1 A. Yes.

2 Q. Were you aware that Lisa Ridolfi demanded overtime pay to
3 stay after 5:30?

4 A. She wasn't there.

5 Q. Were you aware that she demanded overtime pay to stay
6 after 5:30?

7 A. No.

8 Q. Were you aware that Sri Mannava did not ask for any
9 overtime pay to stay after 5:30?

10 A. I have no knowledge of that.

11 Q. That's not something you asked about?

12 A. Pre-search warrant, he wasn't interviewed.

13 Q. Right. That's not something you asked Ms. Ridolfi about,
14 is it?

15 A. Laurie Gutberlet interviewed.

16 Q. And she didn't ask her about that issue, did she?

17 A. She documented the New Year's Eve billing.

18 Q. Ma'am, I'm asking about the overtime issues.

19 A. I don't even know if that's true. But no, it's not in her
20 report.

21 Q. Not even a question about it, right?

22 A. It's not in her report, nope.

23 Q. Right.

24 And if it's not in her report, it didn't happen, right?

25 A. I have to go by that. I have to go by the report.

1 Q. Well, that was your testimony. If it's not in the report,
2 it didn't happen, right?

3 A. Exactly.

4 Q. Right. Let's move on.

5 Now, you mentioned that Lisa Ridolfi videotaped
6 undelivered bags and the volume you found persuasive, right?

7 A. Yes.

8 Q. And you also mentioned something about overflowing bins,
9 right?

10 A. Yes.

11 Q. The bins are, maybe, what, 6 inches tall?

12 A. I don't know.

13 Q. Now, if a pharmacy -- let's use your 450 number, okay. I
14 think the number is actually more, but let's say it's 450
15 prescriptions being filled a day at one pharmacy. Do you know
16 how many bins Plumtree had?

17 A. I have no idea. No idea.

18 Q. And you have no way of knowing whether Ms. Ridolfi staged
19 those photographs, do you?

20 A. I have no information that she did, but no, I don't know.
21 I don't know.

22 Q. And the volume issue, you knew, during the Pharmacare
23 investigation, that Plumtree alone had seven drivers as of that
24 time frame, right?

25 A. I don't know that. I don't know all of them.

1 Q. I'm not saying names. I'm asking about the number.

2 A. I don't know that. I don't know how many drivers they
3 have.

4 Q. Can we agree they had at least five drivers; you knew
5 that?

6 A. I think I knew maybe three of their names, so no.

7 Q. All right. And you also knew, during the investigation,
8 that in addition to the drivers coming every morning to pick
9 up -- every day, probably in the morning, to pick up the
10 prescriptions in the bins, there were clinic people, like
11 Caitlin Biemer who picked up prescriptions from Plumtree and
12 took prescriptions to the clinics, right?

13 A. Correct.

14 Q. And you also knew that if, you know, the drivers couldn't
15 find a patient, they would try again to deliver, because the
16 drivers wanted the patients to get their medications, right?

17 A. Correct.

18 Q. And so this overflowing bin story, about videotape of
19 overflowing bins, you combine that with there not being a
20 14-day rule, it's a nothingburger, right?

21 A. I don't agree with that.

22 Q. Okay. I'm not necessarily expecting you to agree.

23 But you didn't know how many drivers Pharmacare had, did
24 you?

25 A. I can only go by the ones that were interviewed by

1 Laurie Gutberlet.

2 Q. And, actually, she didn't interview a single driver, did
3 she? The answer is no.

4 A. No, not pre-search warrant. We didn't interview drivers.

5 Q. Well, and Laurie Gutberlet was gone by early April 2013,
6 right?

7 A. Right.

8 Q. She never even tried to interview a single driver, did
9 she?

10 A. I don't -- no, I don't -- she'd have to answer that, but I
11 don't know if she did.

12 Q. And there's nothing to corroborate these videotapes that
13 you're saying were so persuasive to you by Lisa Ridolfi, you
14 have no way of knowing how they were taken, when, other than
15 what Ms. Ridolfi told you, right?

16 A. I could -- no, I don't know if she -- I don't know.

17 Q. Okay. Let's move on.

18 You testified that Ridolfi was demoted in December 2012;
19 you know that's not right, don't you?

20 A. I read a report where she was made a floater pharmacist.

21 Q. And that was in July 2013. It's actually, I think, in
22 your affidavit that you said is all accurate, right?

23 A. Okay.

24 Q. So the December 2012 testimony is you gave is false,
25 right? Or is your affidavit false? It's one or the other.

1 A. I guess it was close to the search warrant, yeah. I'm
2 sorry -- I --

3 Q. So you gave false testimony earlier today on that --

4 A. I made a mistake, yep.

5 Q. Made a mistake?

6 A. Yep.

7 Q. Okay. Did you think during the investigation that
8 Mr. Annappareddy was a fool?

9 A. No.

10 Q. You thought he was pretty smart, right?

11 A. I had no opinion about Mr. Annappareddy as being smart, or
12 a fool, or anything. That's not what I do when I investigate
13 somebody. I have no opinion about their personality at all.

14 Q. Let's just sort of pivot to a slightly different issue.

15 All of this evidence that you've talked about and were
16 asked about, it was all found at Plumtree, right?

17 A. What evidence are you --

18 Q. Like, all of it. Like the trash originated from Plumtree
19 that you found in the dumpster at CareMerica, right?

20 A. Yes.

21 Q. And Lisa Ridolfi worked at Plumtree, right?

22 A. Yes.

23 Q. And she started working there in February 2011, you
24 testified yesterday, right?

25 A. Yes.

1 Q. And that's around the same exact time that the Med-4s
2 began being billed out of Plumtree, right?

3 A. Yes.

4 Q. Doesn't make any sense if Middle Easterners are
5 controlling the Med-4s, to put a white woman as the pharmacy
6 manager at Plumtree, does it?

7 MR. EISER: Objection.

8 THE COURT: On what basis?

9 MR. EISER: Hypothetical. She has no basis to know
10 the structure of Mr. Annappareddy's crimes.

11 THE COURT: I'll overrule the objection.

12 Go ahead.

13 THE WITNESS: I have no -- no answer or opinion of
14 that.

15 BY MR. GREENBERG:

16 Q. Because it makes no sense, right?

17 A. I have -- I have no opinion of or never thought of that
18 like that.

19 Q. And you understand -- having been an experienced FBI
20 agent, you understood as of 2013, 25 years mostly white-collar
21 crime, that someone who knows they're being investigated for a
22 serious crime doesn't leave incriminating evidence all over the
23 place at their business, right?

24 A. I didn't --

25 Q. In plain view?

1 A. When do you think I knew that he knew that he was under
2 investigation?

3 Q. You were asked some questions about it, or attempted to.

4 My point is, it makes no sense that someone who thought
5 they were under investigation or believed they're under
6 investigation or suspect they're under investigation would
7 leave all of one of their stores in plain view, does it?

8 A. I can't explain.

9 Q. You can't explain that? Okay. We can move on.

10 All right. You just testified that Dennis Tokofsky didn't
11 want to show his hand for the *qui tam* when he first talked to
12 Laurie Gutberlet. Do you remember that?

13 A. That was just my opinion --

14 Q. Right --

15 A. -- that he didn't want to share everything in that
16 meeting --

17 Q. -- that's a "yes" or "no" question.

18 A. Okay.

19 Q. Now, you -- you said, effectively -- you said that Dennis
20 Tokofsky didn't tell Laurie Gutberlet that he wrote notes or
21 remembered these five, six digit prescription numbers because
22 he didn't want to tip his hand to the MFCU investigator, Laurie
23 Gutberlet; that was your testimony, right?

24 A. Just my opinion.

25 Q. Your opinion. So your opinion is that Dennis Tokofsky

1 lied to Laurie Gutberlet because he didn't want to tip his hand
2 to an MFCU investigator about the *qui tam* he filed the next
3 day?

4 A. I don't know for a fact, but I think he had that
5 information when he sat down with Laurie. But that probably --

6 Q. Ma'am, the question is --

7 MR. EISER: Objection, he's interrupted her answer.

8 MR. GREENBERG: She's not answering.

9 THE COURT: Wait just a minute.

10 Did you want to finish that last answer?

11 THE WITNESS: No. I just want to say that that was my
12 opinion why he held back and didn't give that information
13 because his lawyer was about to file a *qui tam* within 24 hours
14 or less.

15 BY MR. GREENBERG:

16 Q. Right.

17 And you had read the reports by Laurie Gutberlet about how
18 Tokofsky, you know, at first he didn't want to identify
19 himself, he was concerned of being the relator, right? You
20 read that --

21 A. The first call in May --

22 Q. Right.

23 A. -- in 2012.

24 Q. In fact, you probably heard that as recently as this past
25 weekend now that we know about your notes, right?

1 A. I did.

2 Q. By the way, where did you get all of the reports that you
3 reviewed this past weekend?

4 A. I picked them up on Friday at the U.S. Attorney's Office,
5 because I wanted to review them all because I only had a few in
6 my case file. There was a lot of reports, and I didn't put
7 them all in my case file. I had just been reviewing my case
8 file, and I asked if I could have all of them to refresh my
9 memory of the -- how I drafted the affidavit.

10 Q. So if I understand you correctly, Ms. Lating, you at least
11 took part of your case file with you when you left the FBI?

12 A. I did not.

13 Q. Well, you just said you had some of your case file, and
14 you needed to get the reports from the U.S. Attorney's Office.

15 A. I requested weeks ago if I could have my case file so I
16 could start reviewing it in preparation for this week. So I
17 was given five compact disks of my case file so I could review
18 it. But it was --

19 Q. That's not what you testified to about 60 seconds ago.
20 You said you didn't have all of your case file, so you went to
21 go pick up the reports you didn't have.

22 A. Can I answer?

23 Q. Well, I mean --

24 A. What I'm saying is, after I finished reviewing my case
25 file, I realized I didn't have all of the Medicaid reports in

1 my case file. So I asked could I have the complete production
2 from Maryland Medicaid so I could review it because that's how
3 I drafted the affidavit in 2013.

4 **Q.** Okay. But you just again referred to something -- having
5 some stuff in your case file. This is a case file you had
6 after leaving the FBI?

7 **A.** No.

8 **THE COURT:** What's the relevance of all this, what she
9 looked at in recent weeks?

10 **MR. GREENBERG:** Well, if she's taking documents in an
11 investigation upon leaving the FBI, that is a significant
12 issue.

13 **MR. PHELPS:** She never said that.

14 **MR. GREENBERG:** First of all, if it's not your
15 witness.

16 Second of all --

17 **THE COURT:** Hold on just one second. I understood her
18 to say she asked for her case file several weeks ago. She got
19 it, and it didn't have all of the documents she wanted to look
20 at, so she asked for some more. I didn't hear her say she took
21 the file with her when she left work.

22 **MR. GREENBERG:** She didn't say it quite like that.

23 **BY MR. GREENBERG:**

24 **Q.** But, Ms. Lating, is it your testimony you didn't have any
25 documents in the Pharmacare case until you got those reports

1 over the weekend?

2 A. No, I didn't say that.

3 Q. So you did have some documents in the Pharmacare case?

4 A. Weeks ago, I guess received five compact disks, which was
5 every document that was in my case file, since I don't have
6 access to my case file. Okay. I realized, as I was reviewing
7 all these past few weeks, I only put a few of
8 Laurie Gutberlet's reports in my case file, because I always
9 referred to the binder that was given to me to help draft the
10 affidavit. So I asked my lawyer to ask the United States
11 Attorney's Office if I could have copies of every Medicaid
12 report that was produced for this civil trial.

13 Q. Okay.

14 A. I and picked it up on Friday.

15 THE COURT: Again, I'm going to ask Mr. Greenberg,
16 what is the relevance of this?

17 MR. GREENBERG: I'll move one, Your Honor. I think
18 she's clarified, and now I think I understand.

19 THE COURT: Fine.

20 THE CLERK: Your Honor, would this be a good time to
21 adjourn for the day?

22 MR. GREENBERG: Actually, I just want to close the
23 loop on Mr. Tokofsky. I think just two minutes.

24 THE COURT: All right. Take two minutes.

25

1 BY MR. GREENBERG:

2 Q. You read the *qui tam* complaint, right?

3 A. I did.

4 Q. And you -- I want to circle back to this point about your
5 opinion was Dennis Tokofsky didn't tell everything he knew to
6 Laurie Gutberlet; that's your opinion, right? During the first
7 interview?

8 A. My opinion -- my opinion -- okay. My opinion is that he
9 had those names and prescription numbers when he sat down with
10 Laurie and held off because he was going to be filing the
11 *qui tam*, and he was going to put that in the *qui tam* --

12 Q. So -- sorry. Go ahead.

13 A. So this is my opinion. I don't know for a fact. I'm just
14 expressing that I think he already had it because within less
15 than 24 hours, he's filing the *qui tam* with that information as
16 one of the paragraphs.

17 Q. So what you're calling your opinion is really speculation.

18 A. Okay.

19 Q. Do you agree?

20 A. Okay. Yeah.

21 Q. Yes?

22 A. Yes. My opinion, yeah.

23 Q. It's speculation.

24 A. Okay.

25 MR. GREENBERG: I think we can close on this note,

1 Your Honor.

2 **THE COURT:** Let's adjourn until 9:30 tomorrow morning.

3 **MR. GREENBERG:** Oh, Your Honor, sorry, I apologize. I
4 didn't mean to interrupt you. But we would ask that the
5 Government counsel be ordered not to communicate with the
6 witness.

7 **THE COURT:** Don't discuss this case with the lawyers
8 overnight.

9 **THE WITNESS:** Yes, Your Honor.

10 **THE COURT:** Are you finished with this witness?

11 **MR. GREENBERG:** No, Your Honor, because of these notes
12 and some other things, I'm going to be a little more.

13 **THE COURT:** Well, we'll pick back up tomorrow morning
14 at 9:30, and I'll rule on those two disputed exhibits at that
15 time.

16 **MS. FARBER:** Your Honor, just a brief note, since we
17 can't communicate with Ms. Lating while her testimony is
18 pending, would the Court advise her of the dress code change on
19 Friday.

20 **THE COURT:** We're going to have casual day Friday,
21 tomorrow. I forgot about that.

22 I assume you-all want to do that? It's been a little warm
23 in here to me.

24 **MR. GREENBERG:** Your Honor won't be offended if we
25 don't wear a suit?

1 **THE COURT:** I really won't. Business casual tomorrow.
2 Thank you for bringing that up.

3 **MR. GREENBERG:** If I do wear a suit, that'll be okay,
4 too, right?

5 **THE COURT:** Absolutely. All right. Have a nice
6 evening. We'll see you tomorrow morning.

7 (Adjourned at 5:43 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Ronda J. Thomas, Registered Merit Reporter, Certified Realtime Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 1st day of June 2023.

Ronda J. Thomas

Ronda J. Thomas, RMR, CRR
Federal Official Reporter

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